2022711366

CORPORATE AFFAIRS ISSUES HANDBOOK

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

TABLE OF CONTENTS

2022711367

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

TABLE OF CONTENTS

I. ENVIRONMENTAL TOBACCO SMOKE

- Environmental Tobacco Smoke
- Legislative History
- Workplace Smoking Restrictions
- Litigation History
- Workplace Discrimination
- Restaurant Smoking Restrictions
- State Smoking Restriction Summary
- Bibliography -- ETS/Smoking Restrictions

II. CIGARETTE EXCISE TAXES

- Cigarette Excise Taxes -- Executive Summary
- Tax Burden
- Federal, State, and Local Cigarette Taxes
- Tax Increases Compared to Price Increases
- Regressivity
- Job Loss
- State Revenue Effect
- Federal Excise Tax Increases
- Tax Reform Benefits Lost
- Ad Valorem Excise Taxation
- Indexation
- Earmarking
- Social Engineering
- State Excise Tax Summary
- State Cigarette Excise Tax History
- Bibliography -- Excise Taxes

III. ADVERTISING

- Youth Smoking
- Advertising Expenditures and Cigarette Use
- Advertising and Promotion
- Advertising and Product Improvement
- Sampling Bans
- Advertising Deductibility
- Bibliography -- Advertising

IV. SCIENCE & ENVIRONMENTAL ISSUES

- Solid Waste/Packaging Legislation
- Proposition 65 -- Toxic Enforcement Act
- Smoking Cited as a Cause on Death Certificates
- Science Fraud

V. SOCIAL ISSUES

- Social/Health-Care Costs
- Social Acceptability
- Bibliography -- Social Costs

2022711368

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

VI. LIABILITY

- Fire-Safe Cigarette Legislation
- Cigarette Testing and Liability Act
- Cigarette Manufacturer Liability
- Warning Labels

VII. REGULATORY ISSUES

- Tobacco Regulation
- Tobacco Price Support
- Tobacco and International Trade

VIII. APPENDICES

A. Companies with No-Smoking Policies
B. Employment and Revenue Effects of Select Increases in the State Excise Tax on Cigarettes, by State
C. Employment and Revenue Effects of an Increase in the Federal Excise Tax on Cigarettes, By State

2022711369

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

2022711370

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

ENVIRONMENTAL TOBACCO SMOKE (4/89)

STATUS

Environmental Tobacco Smoke (ETS) (a.k.a. "passive smoking," "ambient smoking," "sidestream smoke," and "involuntary smoking") has been a legal issue since 1975, when eight states enacted restrictions on smoking in public places other than elevators. These early smoking restrictions were motivated primarily by annoyance, rather than by scientific evidence of any health hazard. However, the anti-smokers and media attention given to the alleged effects of ETS on health have since persuaded 42 states, over 600 localities, and hundreds of businesses to restrict smoking in the workplace and other public places.

On the federal level, several smoking restrictions have been implemented. For example, in 1987, the General Services Administration imposed restrictions on its 890,000 employees in 6,800 government buildings. In May 1987, the Department of Health and Human Services banned smoking in the buildings its 120,000 employees occupy. In July 1987, Congress banned smoking on 80 percent of all domestic airline flights for a trial period of two years.

SUMMARY ARGUMENTS

A review of the scientific literature on ETS indicates that it has NOT been shown to pose a health hazard to nonsmokers. Most of the studies alleging an ETS/Nonsmoker health risk have been criticized for three fundamental flaws: 1) selection bias: the use of inaccurate, unverifiable information from research participants; 2) misclassification of variables, such as diet and occupation, which are present and unaccounted for in a number of the studies; and 3) failure of the studies to use a standard method for measuring exposure to ETS, either in the air or in the bodies of nonsmokers.

1. A newsletter put out by the American Cancer Society in advance of the Great American Smokeout on November 17, 1988, states "...the currently available evidence is not sufficient to conclude that passive smoking or involuntary smoking causes lung cancer in nonsmokers..."[1] This is a reversal of the position of the American Cancer Society, which previously assumed a causal link between ETS and lung cancer in healthy nonsmokers.

2. In 1987, the National Research Council/National Academy of Sciences released a comprehensive analysis of indoor air pollution with dozens of recommendations, including

[1] American Cancer Society Newsletter, November 17, 1988.

2022711371

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

investigating asbestos sources, reducing levels of radon, and increasing air flow and number of air filters. Nowhere in the report were smoking regulations advocated.[2]

3. A 1987 report written by Theodore D. Sterling, Ph.D., Canadian professor of environmental issues, stated "...prohibition of smoking has not been shown to have any measurable effect on either indoor air quality or associated health and comfort symptoms of sick-building syndrome."

4. Reports of the National Academy of Sciences (NAS) and the Surgeon General are clearly flawed. "They do not demonstrate a valid casual relationship between chronic exposure to ETS and an increased incidence of lung cancer. The epidemiological studies underlying the reports contain classification errors, reporting biases, and confounding variables."[3] **Surveying the same epidemiological evidence considered by NAS and the Surgeon General, the International Agency for Research on Cancer of the World Health Organizations (WHO) concluded that the available evidence is consistent with the finding of no increase of risk.**

5. In 1987, the federal government's National Institute Of Occupational Safety and Health (NIOSH) inspected 356 buildings for indoor air complaints, and reported 50 percent of complaints were caused by inadequate ventilation. **Only 2 percent were related to tobacco smoke.**[4]

6. A June 1986 ETS study conducted in Dallas by the International Technology Corporation concluded that to be exposed to the equivalent of one cigarette, a person must spend:

   -264 consecutive hours (11 full days) in an office building;
   -398 consecutive hours (16-1/2 full days) in a restaurant;
   -224 consecutive hours (9-1/2 full days) in the nonsmoking section of a commercial airliner.

---

[2] "Every Breath You Take," Inc. Magazine, November 1988.

[3] Statement of Larry Holcomb, Ph.D., before the Subcommittee on Aviation of the Committee on Public Works and Transportation, U.S. House of Representatives, October 7, 1987.

[4] "Indoor Air Quality: The NIOSH Experience," National Institute of Occupational Safety and Health, 1984.

2022711372

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

Similar studies, conducted in New York and Toronto, reached the same conclusion.

7. As early as 1983 and 1984, 65 internationally known physicians and scientists met three times to address the health effects of passive smoking. They concluded, collectively and independently, that no conclusion could be made about whether ETS has any health effect on nonsmokers:

> March 1983 - University of Geneva researchers concluded: "An overall evaluation based upon available scientific data leads to the conclusion that an increased risk for nonsmokers from ETS has not been established."[5]
>
> 1983 - The National Institutes of Health determined that "the possible health effects of ETS on the respiratory system vary from negligible to quite small."[6]
>
> April 1984 - Participants at a workshop in Vienna, Austria, concluded, "Should lawmakers wish to take legislative measures with regard to smoking, they will, for the present, not be able to base their efforts on a demonstrated health hazard from passive smoking."[7]

8. The first Surgeon General's Report on Smoking and Health in 1964 addressed ETS, but admitted that more research was needed. The 1979 Surgeon General's Report stated that "healthy nonsmokers exposed to cigarette smoke have little or no physiological response to smoke." This report called for more research (Chapter 11; p. 7). The 1986 Surgeon General's Report stated over 56 times that more research was needed.

THE REAL ISSUE

The presence of ETS is really a symptom of a larger problem: that of bad indoor air quality in general, also known as sick-building syndrome. Many invisible, noxious substances are trapped indoors by

---

[5] Rylander, R., "ETS -- Environmental Tobacco Smoke Effects on the Nonsmoker: Report From A Workshop, 1984.

[6] Workshop on Respiratory Effects of Involuntary Smoke Exposure, National Institutes of Health, 1983.

[7] "International Symposium on Medical Perspectives on Passive Smoking," **Preventive Smoking**, 1984.

2022711373

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

poor ventilation, among them, ozone, asbestos, fiber glass, bacteria, fungi, carbon monoxide, and formaldehyde. Since ETS is visible, it is assumed to be the sole culprit. However, banning smoking has not been shown to have any measurable effect on indoor air quality. Gray Robertson, air quality and indoor ventilation expert, believes that "by eliminating the underlying problem of poor ventilation, one eliminates the ETS problem."[8]

[8] "Sick Building Syndrome: Causes and Effects," Robertson, Gray, ACVA - Atlantic, Inc.

2022711374

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

A BRIEF LEGISLATIVE HISTORY OF ETS (4/89)

The Health Consequences of Involuntary Smoking: A Report of the Surgeon General, issued in 1986, is the first report "that identifies a chronic disease risk resulting from exposure to tobacco smoke for individuals other than smokers." As early as the 1970's, however, concerns over ETS were used to justify government-imposed smoking restrictions.

The scope of such restrictions, narrow at first, has broadened over the years. States and an increasing number of localities have moved from regulating smoking in public conveyances and other common areas to restricting smoking in the private workplace and restaurants, to outright bans on smoking. Activity appears to have peaked in 1987.

(TABLE 1)
TOTAL NUMBER OF SMOKING RESTRICTION BILLS

	STATE		LOCAL		TOTAL	
	Intr.	Appr.	Intr.	Appr.	Intr.	Appr.
1979	114	8	58	23	172	31
1980	98	1	60	32	149	33
1981	100	10	65	35	165	45
1982	86	4	79	42	165	46
1983	86	5	120	62	206	67
1984	109	4	180	65	289	69
1985	142	26	232	114	374	140
1986	140	17	255	139	395	156
1987	191	28	301	169	492	197
1988	189	18	253	123	411	130

Source: The Tobacco Institute

Table 1 shows that from 1979 to 1987, the number of smoking restriction bills introduced in the states increased by 68%, with a slight decrease in 1988. The rate of approval for these bills increased from 7% to 15% between 1979 and 1987, and fell to 10% in 1988.

2022711325

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

The figures for bills introduced in the localities from 1979 to 1987 reflect a sharp increase of 419%, while the number fell in 1988 by 19%. The approval rate increased from 40% in 1979 to 56% in 1987, with a slight decrease in 1988.

(TABLE 2)
BREAKDOWN BY BILL SUBCATEGORIES

	Priv Wk. Pl.		Govt Wk. Pl.		Rest.		Public Pl. *	
STATE	Intr.	Appr.	Intr.	Appr.	Intr.	Appr.	Intr.	Appr.
1985	36	3	39	7	43	4	165	19
1986	52	3	58	6	55	2	179	10
1987	58	3	66	10	68	6	210	27
1988	58	4	55	4	58	2	116	9
LOCAL	Intr.	Appr.	Intr.	Appr.	Intr.	Appr.	Intr.	Appr.
1985	91	52	120	67	118	68	379	205
1986	112	56	155	86	155	80	459	261
1987	133	70	200	115	169	88	524	295
1988	112	49	174	84	141	63	201	99

* Public Places include commercial establishments, publicly owned buildings, outdoor areas, and other public areas.

Source: The Tobacco Institute

Table 2 shows that for each provision listed, the number of state bills approved in 1988 decreased from 1987, with the exception of private workplace bills, which increased by one approved bill.

At the local level, the number of bills introduced and approved in 1988 decreased from the previous year in all of the listed categories.

2022711376

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

A BRIEF LEGISLATIVE HISTORY OF ETS (4/89)

The Health Consequences of Involuntary Smoking: A Report of the Surgeon General, issued in 1986, is the first report "that identifies a chronic disease risk resulting from exposure to tobacco smoke for individuals other than smokers." As early as the 1970's, however, concerns over ETS were used to justify government-imposed smoking restrictions.

The scope of such restrictions, narrow at first, has broadened over the years. States and an increasing number of localities have moved from regulating smoking in public conveyances and other common areas to restricting smoking in the private workplace and restaurants, to outright bans on smoking. Activity appears to have peaked in 1987.

(TABLE 1)
TOTAL NUMBER OF SMOKING RESTRICTION BILLS

	STATE		LOCAL		TOTAL	
	Intr.	Appr.	Intr.	Appr.	Intr.	Appr.
1979	114	8	58	23	172	31
1980	98	1	60	32	149	33
1981	100	10	65	35	165	45
1982	86	4	79	42	165	46
1983	86	5	120	62	206	67
1984	109	4	180	65	289	69
1985	142	26	232	114	374	140
1986	140	17	255	139	395	156
1987	191	28	301	169	492	197
1988	189	18	253	123	411	130

Source: The Tobacco Institute

Table 1 shows that from 1979 to 1987, the number of smoking restriction bills introduced in the states increased by 68%, with a slight decrease in 1988. The rate of approval for these bills increased from 7% to 15% between 1979 and 1987, and fell to 10% in 1988.

2022711377

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

The figures for bills introduced in the localities from 1979 to 1987 reflect a sharp increase of 419%, while the number fell in 1988 by 19%. The approval rate increased from 40% in 1979 to 56% in 1987, with a slight decrease in 1988.

(TABLE 2)
BREAKDOWN BY BILL SUBCATEGORIES

	Priv Wk. Pl.		Govt Wk. Pl.		Rest.		Public Pl. *	
STATE	Intr.	Appr.	Intr.	Appr.	Intr.	Appr.	Intr.	Appr.
1985	36	3	39	7	43	4	165	19
1986	52	3	58	6	55	2	179	10
1987	58	3	66	10	68	6	210	27
1988	58	4	55	4	58	2	116	9
LOCAL	Intr.	Appr.	Intr.	Appr.	Intr.	Appr.	Intr.	Appr.
1985	91	52	120	67	118	68	379	205
1986	112	56	155	86	155	80	459	261
1987	133	70	200	115	169	88	524	295
1988	112	49	174	84	141	63	201	99

* Public Places include commercial establishments, publicly owned buildings, outdoor areas, and other public areas.

Source: The Tobacco Institute

Table 2 shows that for each provision listed, the number of state bills approved in 1988 decreased from 1987, with the exception of private workplace bills, which increased by one approved bill.

At the local level, the number of bills introduced and approved in 1988 decreased from the previous year in all of the listed categories.

2022711378

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

FEDERAL EFFORTS ON SMOKING RESTRICTIONS

Two smoking restrictions have passed at the federal level:

- The Durbin amendment (a two-hour airline smoking ban) and the Mrazek amendment (a Long Island Railroad smoking ban) to the transportation appropriations bill (HRJ395) became law when Congress passed the 1987 continuing resolution (12/22/87).

- On September 30, 1988, Representative Richard Lehman introduced a bill (HR4798) which directed Amtrak to include specific questions pertaining to smoking on its passenger trains and to report all findings to committee before 3/1/89. It also required the FAA to report on enforcement of airline "no smoking" regulations enacted in 1987 by 7/27/89.

2022711379

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

WORKPLACE SMOKING RESTRICTIONS (4/89)

STATUS

Since 1980, twenty-four states and almost 150 localities have enacted laws governing smoking in the workplace. Among private businesses a 1987 Bureau of National Affairs Survey[1] indicated:

- 54% of the 623 employers surveyed reported having a workplace smoking policy;
- 21% were considering such a policy;
- 12% had banned all smoking at the workplace;
- 51% had banned smoking in all open areas;
- 33% had banned smoking in all private offices;
- 8% of the companies allowed preference to be given to hiring nonsmokers, and 1% hired only nonsmokers

Over 200 pieces of legislation are annually considered by states and localities to restrict smoking in the workplace. In the states, about 93% are rejected and the few that pass generally require businesses to have a policy--any policy--on smoking. In the localities, about 47% of the legislation passes, and it is often much more stringent than the state proposals.

SUMMARY ARGUMENTS

Restricting smoking in the workplace is bad public policy and bad business policy. Restrictions:

1. **Lead To Job Discrimination.** Smoking is most often restricted in open areas where clerical workers (usually women and minorities) are employed, while managerial personnel in private offices are exempt.
2. **Lower Employee Morale And Increases Dissension.** By focusing attention on smoking, such restrictions create tensions and conflicts. Often conflicts, which are ostensibly smoking-related, are in fact manifestations of more profound interpersonal problems. Policies targeted on smoking treat a symptom of the deeper problem, not the problem itself.

2022711380

---

1 "Where There's Smoke: Problems and Policies Concerning Smoking in the Workplace," Bureau of National Affairs, 1987.

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

3. **Interferes With Labor-Management Relations.** Working conditions have long been an issue subject to labor-management negotiations in the same way as wages, hours, and benefits are. Arbitrary smoking rules, whether imposed by government or a distant corporate headquarters, disrupt the long-established freedom of labor to settle issues in the normal course of contract negotiation.

4. **Interpose The Employer As A Policeman Between Employees And Between Unions And Their Membership.** An employer should concentrate on providing a good-quality product or service in an efficient manner with an eye on the marketplace. Forcing management to enforce smoking rules interferes with these goals and weakens our economic system.

5. **Usurp The Traditional Role Of Unfettered Business Decision-Making In The Free Marketplace.** Businesses are best able to determine the smoking policies that suit smoking and nonsmoking employees and customers <u>without</u> government interference.

6. **Impose Significant Costs And Inefficiencies On Employers.** In attempting to comply with some workplace smoking laws, employers may be forced to remodel work areas and relocate personnel. Such structural changes can mean significant expenditures, while relocating employees away from the rest of their work group increases inefficiency and decreases morale.

7. **Do Not Reduce Financial Savings Or Productivity.** The 1987 BNA Survey stated that only 5% of the respondents reported financial savings from banning smoking, 3% reported a decrease in productivity after implementing a smoking policy, and the vast majority, 89%, reported no effect.

8. **Overlooks The Real Issue.** A survey by the Washington Legal Foundation (11/3/88) indicated that only 2% of human resource managers cite smoking as an area of concern. Ed Reilly, President, Kennan Research, which conducted the study, said, "It's no surprise to us that the issues mentioned first were 'bread and butter' issues [2].. rather than peripheral concerns such as .... smoking."

2027711381

---

2 "A Survey of Personnel Policies in the Workplace," Washington Legal Foundation, 1987.

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

WORKPLACE SMOKING RESTRICTIONS: LITIGATION HISTORY (4/89)

1. Most courts have struck down arguments that a tobacco smoke-free environment is guaranteed by provisions of the U.S. Constitution.

2. The Federal Occupational Safety and Health Act has been cited as a basis for restricting smoking in the workplace, in that the Act requires agencies to "provide safe and healthful places and conditions of employment," but the courts have held the Act gives no support to individual employee plaintiffs. (Federal Employees for Non-Smokers' Rights vs. U.S., 1978)

3. The argument that common law entitles a nonsmoking employee to a tobacco smoke-free workplace has also been rejected, most recently in the 1983 decision, Gordon vs. Raven Systems & Research Inc. The District of Columbia Court of Appeals decision stated, "The common law does not impose upon the employer the duty or burden to conform his workplace to the particular needs or sensibilities of an individual employee."

4. Also in 1983, in Commonwealth of Pennsylvania vs. Pennsylvania Labor Relations Board, the court ruled that an employer cannot impose smoking restrictions unilaterally when a collective bargaining agreement is in effect.

5. In 1976, Gasper nonsmoking employees sued those who managed the superdome to prohibit smoking during public events (Gasper v. Louisiana Stadium and Exposition District). The court found "the state's permissive attitude ... adequately preserves the delicate balance of individual rights without yielding to the temptation to intervene in purely private affairs."

6. The U.S. Court of Appeals for the Tenth Circuit affirmed the dismissal of a complaint alleging that an employer's refusal to provide a smoke-free workplace violated a plaintiff's First Amendment rights "because the smoke interfered with his ability to think."

Source: Covington and Burling

2022711382

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

DISCRIMINATORY HIRING PRACTICES (4/89)

STATUS

To date, only two state discriminatory hiring policies have been adopted. In 1986, an executive order was issued by the Governor of North Dakota approving the Department of Health's hiring policy, giving preference to nonsmokers for departmental jobs. The second was adopted by the Massachusetts State Legislature requiring all public safety personnel hired after 1/1/88 to be nonsmokers. In five other states, anti-smoker proposals are still pending (California, Connecticut, Florida, Kansas and Minnesota).

Sixty nine discriminatory hiring proposals have been introduced in localities around the country. Fifty-two policies have been adopted while seventeen were defeated. In 1977, Alexandria, Virginia, became the first locality to implement a policy requiring newly hired police officers to be nonsmokers. The policies either require future employees to be nonsmokers on/off the job or promote preferential hiring of nonsmokers.

LEGAL BATTLES

Of the 25 court and arbitration cases involving smoker discrimination in the workplace, 1 had an outcome in favor of the employer, while 9 favored smoking employees. Over half of the cases that favored smokers occurred before 1985. The other 15 cases were either settled out of court or are still pending.

SUMMARY ARGUMENTS

1. Legal, avocational activities unrelated to job performance are an individual's business and need to remain protected from employer intrusion. By hiring only smokers, employers encourage intolerance, prejudice, and small-mindedness, and help pave the way for even more intrusive invasions into the private lives of employees.

2. The Commissioner of the Minnesota Department of Human Rights, Stephen W. Cooper, stated that an attempt by DCA Inc. of Minnetonka not to hire smokers was "an illegal discriminatory practice to deny employment or terminate any person solely because of a disability or perceived disability. The very prohibition on disability or perceived disability discrimination is to prevent adverse consequences befalling a person which do not prevent them from performing their job duties."

3. The intrusion into people's behavior away from the workplace and in matters unrelated to work is not based upon any job necessity. A bona fide occupational qualification or a reasonable probable risk to the health or safety of the applicant or others must exist for an exclusion of employment. The burden of proof also must be on the employer.

2022711383

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

RESTAURANT SMOKING RESTRICTIONS (4/89)

STATUS

Currently, 22 states and more than 300 localities have enacted laws to restrict smoking in restaurants. In 1988, 141 local restaurant smoking restriction bills were introduced, of which 63 (45%) passed. In the states, 2 of 58 bills introduced in 1988 passed (almost 3 percent).

A Gallup survey conducted in February 1987 for the National Restaurant Association found that:

- 50% feel that enough restaurants have no-smoking sections;
- A plurality (41%) feel that tobacco smoke is not usually a problem in restaurants;
- 57% do not ask if there is a no-smoking section;
- 27% would not eat at a restaurant that did not allow smokers (50% of smokers, 20% of nonsmokers);
- 62% rate smoking behind food and service in importance;
- 39% have no preference for no-smoking sections.

COMMENTS

In general, the Gallup survey illustrates that, for most people, smoking is not of primary importance when dining out. The quality of food and service are. Also, most people are content with current arrangements since they don't feel compelled to seek out no-smoking sections.

Two important survey results need to be highlighted:

1) Many more people than just those who smoke have no preference between sections, suggesting that the scope of government legislation is out of proportion to most people's perception of the situation.

2) The Beverly Hills Experience -- The survey also suggests that severe restrictions will be bad for business. Reality has already borne this out: when Beverly Hills, California, banned smoking in its restaurants, business declined by 30% (implying a $12 million/year loss in business), workers were laid off, and proprietors had trouble enforcing the law. Finally, the city had to redraft the law to allow for smoking in restaurants.

Another survey conducted by independent scientists concluded that it would take a marathon eating session of 17-and-a-half days, or more than 400 continuous hours, for a diner in a typical restaurant to be exposed to the nicotine "equivalent" of one cigarette.

2022711384

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

SUMMARY ARGUMENTS

1. By restricting smoking in restaurants, businesses will not only lose the business of smokers, but that of those in the company of smokers.

2. If business suffers as a result of increased public smoking regulation, so will government. Loss of business in the private sector results in decreased tax revenues for government. Lower business revenues, the possibility of business failure, and subsequent declines in employment will reduce the taxable income base and increase unemployment compensation payments.

3. Respect, tolerance, and accommodation must remain the business of people, not government.

4. Legislating behavior that merely annoys some people was never meant to be the business of government.

5. The answer to the public smoking issue lies in mutual courtesy on the part of smokers and nonsmokers.

6. Restaurant smoking restriction proposals smack of elitism. Lower income groups tend to smoke in higher proportions than the more affluent. Therefore, members of this income group have a greater chance of being fined or arrested for violating this measure.

7. Restaurant owners and managers can best determine the smoking policy that suits their clientele without the interference of government. Indeed, marketplace economics makes the successful accommodation of all patrons a business imperative regardless of government intrusion.

2022711385

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

STATE
SMOKING RESTRICTION LAWS
January 1989

The Tobacco Institute
State Activities Division

State	Any Public Bldg. Posted As No Smoking	Elevators	Public Transportation	Educational Facilities	Cultural Facilities	Health Care Facilities	Govt. Owned Bldg./Public Meetings	Food Stores	Retail Stores	Restaurants	Workplace-Government	Workplace-Private Sector
ALABAMA												
ALASKA	•	•	•	•	•	•	•	•		•	•	
ARIZONA		•	•	•	•	•	•				•	
ARKANSAS						•	•				•	
CALIFORNIA			•	•	•	•	•	•			•	
COLORADO	•	•	•	•	•	•	•					
CONNECTICUT		•	•	•		•	•	•		•	•	•
DELAWARE			•									
FLORIDA		•	•	•	•	•	•	•	•	•	•	•
GEORGIA	•	•	•									
HAWAII	•	•	•		•	•	•	•	•	•	•	
IDAHO		•	•	•	•	•	•	•	•	•		
ILLINOIS												
INDIANA							•				•	
IOWA		•	•		•	•	•	•	•		•	•
KANSAS		•	•	•	•	•	•	•	•	•		
KENTUCKY				•								
LOUISIANA					•							
MAINE	•			•		•	•		•	•	•	•
MARYLAND		•	•			•		•	•			
MASSACHUSETTS		•	•		•	•	•	•		•		
MICHIGAN		•	•	•	•	•	•	•		•	•	
MINNESOTA	•	•	•	•	•	•	•	•	•	•	•	•
MISSISSIPPI			•									
MISSOURI												
MONTANA	•	•	•	•	•	•	•	•	•	•	•	•
NEBRASKA	•	•	•	•	•	•	•	•	•	•	•	•
NEVADA		•	•		•	•	•	•			•	
NEW HAMPSHIRE	•	•	•	•	•	•	•	•	•	•	•	•
NEW JERSEY	•	•	•	•	•	•	•	•		•	•	•
NEW MEXICO											•	
NEW YORK			•		•							
NORTH CAROLINA												
NORTH DAKOTA	•	•	•	•	•	•	•			•		
OHIO		•	•	•	•	•	•					
OKLAHOMA		•	•	•	•	•	•			•	•	
OREGON	•	•		•	•	•	•	•	•	•	•	
PENNSYLVANIA	•	•	•	•	•	•	•		•	•	•	•
RHODE ISLAND		•	•	•	•	•		•		•	•	•
SOUTH CAROLINA												
SOUTH DAKOTA		•	•	•	•	•	•					
TENNESSEE												
TEXAS		•	•	•	•	•						
UTAH	•	•	•	•	•	•	•	•	•	•	•	•
VERMONT	•			•			•				•	•
VIRGINIA												
WASHINGTON		•	•	•	•	•	•	•	•	•		
WEST VIRGINIA			•			•						
WISCONSIN		•	•	•		•	•	•	•	•	•	
WYOMING												
42 States	15	30	34	28	29	33	31	22	16	22	25	13
D.C.		•	•	•		•	•		•	•		

2022711386

Fire Prevention Laws are not included.

*Local Authorizing Statute

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

BIBLIOGRAPHY OF BALANCED SMOKING RESTRICTION ARTICLES

Allen, Joe, "Smokers Have Rights, Too," Brooklyn Graphic, April 22, 1988.
-- Whether or not to smoke is a personal choice.

Baker, Russell, "Smoke in Cambridge," The New York Times Magazine, March 29, 1987.
-- What will happen if the anti-smokers take over.

Baker, Russell, "The Smoker Rebellion," International Herald Tribune, March 27, 1987.
-- Amusing smoking restrictions anecdote.

Baker, Russell, "Vile as Smoke," The New York Times, January 6, 1988.
-- Ban dirty talk instead of smoking.

Berger, Peter L., "A Sociological View of the Antismoking Phenomenon," Smoking and Society, Toward a More Balanced Assessment, D.C. Heath and Company, Lexington, Massachusetts, 1986.
-- The sociological effects of the opposite views on the smoking issues; average person must take a stand with secondhand information as their source.

Bertelson, Arthur, "When Smoke Clears, What Will Go Next?" St. Louis Post Dispatch, April 26, 1988.
-- What will companies like Northwest do next?

Brady, James, "Six More Weeks of Freedom Before the No-smoking Rules," Crain's New York Business, February 22, 1988.
-- Ludicrous no-smoking rules in New York City restaurants and bars.

Brown, Tony, "Smoking Debate Makes all Involved Look a Little Bit Silly", Gannett Westchester Newspapers, March 2, 1988.
-- Concerning the MTA and the LIRR's smoking ban.

Bruce-Briggs, B., The War Against Smoking, North American Policy Research, October, 1987.
-- Studies have been done on smoking, which are supported by the Surgeon General, but are the studies proven?

Bryant, M.; Melliger, S.; Orwig, J.; Pool, D.; Perkins, J.; Littrell, B.; Graham, J.; Shafer, T.; Kilmer, L.; Furby, T., Technical Report: A Survey of the Attitudes of School Personnel Toward Employee Smoking Policies, Department of Educational Administration, May 1988.
-- "And, policies that are neither too restrictive or too permissive find the greatest favor."

Bryant, M.; Melliger, S.; Orwig, J.; Pool, D.; Perkins, J.; Littrell, B.; Graham, J.; Shafer, T.; Kilmer, L.; Furby, T., A Smoke Free Environment For Your School? A Guide to Developing and Implementing Smoking Policies, Teachers' College, UNL.
-- Smokers make up a large segment of the population, thus a middle-of-the-road approach is necessary.

2022711387

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

(Smoking Restrictions- cont.)

Buchanan, James M., "Politics and Meddlesome Preferences," Smoking and Society, Toward a More Balanced Assessment, Robert Tollison, ed., D.C. Heath and Company, Lexington, Massachusetts, 1986.
-- Advocating tolerance in restricting others' behavior.

Cassidy, J.Warren, "Here We Stand," American Rifleman, February, 1988.
-- A look at too much government control in our lives.

Cockburn, Alexander, "The Great American Smoke Screen," The Wall Street Journal, June 16, 1988.
-- Health campaign nuts are fascists.

Coffey, Oscar J. Jr., "Smoking May Not Be Healthy But It's a Personal Decision," NCBCC News, December, 1986.
-- Too much hypocrisy about what is and is not good for you.

DeLay, Tom, "In Defense Of Smokers Who Fly," The Washington Post, June 25, 1988.
-- There are more important complaints than smoke aboard planes.

Den Uyl, Douglas J., "Smoking, Human Rights, and Civil Liberties," Smoking and Society, Toward a More Balanced Assessment, Robert Tollison, ed., D.C. Heath and Company, Lexington, Massachusetts, 1986.
-- "...To ask public authorities to take responsibility for what can and should be the responsibility of individuals is always a threat to liberty."

Des Ruisseaux, Richard, "Smoker Lashes Out at Airline Apartheid," The Louisville (KY) Times, Sept. 4, 1985.
-- Smoking sections on flights are for smokers, not complaining non-smokers.

Dillow, Gordon, "Ear Pollution From Anti-Smoker's Lungs," Los Angeles Herald Examiner, November 22, 1985.
-- A current epidemic of people are intent on forcing total strangers to stop smoking.

Ethridge, Dr. Robert W. and Fox, John C., esq., "Toward a Civil Rights Approach to Smoking," American Association for Affirmative Action, Atlanta, Georgia, 1987.
-- Smoking as a disparity in equal rights; employment.

Eysenck, Hans J., "Smoking and Health," Smoking and Society, Toward a More Balanced Assessment, D.C. Heath and Company, Lexington, Massachusetts, 1986.
-- "...examines the scientific and statistical credibility of the 'received view' (or conventional wisdom) of the impact of smoking on health."

Feinhandler, S.J., Anti-Smoking and the Body Politic, Cambridge, Massachusetts.
-- Anti-smoking movement and its effect on the smoker's status.

2022711388

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

(Smoking Restrictions - cont.)

Feinhandler, Sherwin J., "The Social Role of Smoking," Smoking and Society, Toward a More Balanced Assessment, D.C. Heath and Company, Lexington, Massachusetts, 1986.
-- Smoking determined culturally rather than physiologically or psychologically.

Geier, Philip H., "Where Smokers Can Breathe Free," The New York Times, October 14, 1986.
-- Mutual accommodation as opposed to harsh legislation.

Glassner, Barry, "Beware of This Compulsion To Make Us All Be Healthy," International Herald Tribune, February 18, 1988.
-- If workplaces ban smoking, what will be next?

Glassner, Barry, "Why Smoking Bans Are Dangerous," The New York Times, February 9, 1988.
-- People have their own preferences, and all should be defended, including smokers' preferences.

Goodwin, Dan, "Bureaucrats May Be Overstepping Authority," Shelbyville (TN) Times-Gazette, October 23, 1985.
-- Surgeon General should stop telling others what to do.

Grimsley, Edward, "Reach For a Lucky, Land in Jail," Richmond (VA) Times-Dispatch, June 3, 1988.
-- Koop and other anti-tobacco crusaders are pursuing a prohibitionist campaign. Soon smokers will only be able to smoke in their own homes.

Hadaway, Patricia F., and Beyerstein, Barry L., "Then They Came for the Smokers but I Didn't Speak Up Because I Wasn't a Smoker: Legislation and Tobacco Use," Canadian Psychology.
-- Fight against the anti-smoking movement.

Harris, Ralph, "Now Who's Blowing Smoke in Your Eyes?", Sunday Telegraph, June 19, 1988.
-- Soon everything that's controversial will be going on trial.

Jensen, Pat, "Thoughts From a Cigarette Smoker," Alberta Lea (MN) Evening Tribune, November 21, 1985.
-- The Clean Indoor Air Act has led to anti-smoker militancy.

Kelly, Sean; Leight, Warren; Rubin, Charles; Perman, Don; Thomas, Rick; Hauge, Ron, 101 Ways to Answer the Request "Would You Please Put Out That #(!&*¢$ Cigar!" Simon & Schuster, Inc., New York, NY, 1987.
-- Humorous responses to being asked to put out a cigar/cigarette.

Levant, A.L., "Clearing the Smokescreen in Cigarette War,,The Boston Globe, August 18, 1988.
-- Money spent on denying smokers their rights, could be spent on trying to cure diseases.

2022711389

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

(Smoking Restrictions - cont.)

Levin, Bernard, "Enter the Tee-Totalitarian," London Times, January 28, 1988.
-- Restrictions on smoking are just the beginning of restrictions on everything.

Littlechild, Stephen C., "Smoking and Market Failure," Smoking and Society, Toward a More Balanced Assessment, Robert Tollison, ed., D.C. Heath and Company, Lexington, Massachusetts, 1986.
-- "...arguments based on imperfect information and market failure offer no convincing basis for additional regulation of smoking."

Manso, Peter, "Smokers' Revolt," Penthouse, July, 1988.
-- These laws are ridiculous; amusing anecdotes provided.

Markowitz, Arnold, "Debate Over Smoking May be as Addicting as the Habit," The Miami Herald, May 19, 1988.
-- The anti-smokers are getting out of hand.

Mitchell, Henry, "Among the Addicts and Crusaders," The Washington Post, May 20, 1988.
-- The crusaders are just as bad as the addicts where smoking restrictions are concerned.

Olson, Walter, "Blaming the Tempters Ignores Human Failings," Quincy Herald-Whig, June 28, 1988.
-- If people continue with lawsuits against cigarettes, why should they stop at anything else?

Peters, Mike, "Supermarket Shopping a Health Hazard," Greeley (CO) Tribune, December 1, 1984.
-- Smokers are not the real problem in supermarkets.

Reese, Charley, "Where There's Smoker, There Has to be Ire," Dallas Times Herald, January 8, 1987.
-- Banning smoking just as bad as prohibition.

Sager, Mike, "Confessions of a Butt Head," Regardie's, February, 1987.
-- Humorous reasons for his decision to continue to smoke.

Samuelson, Robert J., "Limit 'No Smoking' Quest," The Washington Post, March 18, 1987.
-- Common courtesy is fine, so why does the government have to ostracize smokers?

Sanders, Jacquin, "New Anti-Smoking Law May Just go up in Smoke," St. Petersburg (FL) Times, October 6, 1985.
-- The smokers come across just as strongly as the anti's.

Santa Maria, Carmine, "Cracking Down on the (New) Addicts," The Brooklyn Graphic, June 1, 1988.
-- Too many other major problems in New York to go after smokers.

2022711390

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

(Smoking Restrictions - cont.)

Santa Maria, Carmine, "Hello - New State Smoking Ban - Goodby Democracy!" The Brooklyn Graphic, February 18, 1987.
-- New Yorkers hardly had a say in the smoking restriciton decision.

Santa Maria, Carmine, "Let's Cool The Rhetoric On The Smoking Issue," The Brooklyn Graphic, February 24, 1988.
-- New York City is not supportive of the New York smoking ban.

Santa Maria, Carmine, "Screeching Out Against Smoking Bans," The Brooklyn Graphic, January 21, 1987.
-- Fighting City Hall about the NYC smoking restrictions.

Seligman, Daniel, "The Capitalist Solution," Fortune, May 23, 1988.
-- Government should not interfere with smoking policies.

Shell, Ellen Ruppel, "The Risks of Risk Studies," Atlantic, November, 1987.
-- Conclusions from epidemiologic reports are drawn too quickly, and given too much publicity.

Van den Haag, Ernest, "Smokers Have Rights, Too," The New York Times, April 9, 1985.
-- Smokers are courteous, thus restrictions are absurd.

Warburton, David, "The Little Vice, A Conversation with David Warburton," EPOCA (translated) - no date available.
-- Equating nicotine with heroin can have disastrous effects.

Waugh, Auberon, "Auberon Waugh's Column," Sunday Telegraph (London), August 9, 1987.
-- Smokers are never as hostile as anti-smokers.

Whitby, Dr. William T., The Smoking Scare De-Bunked, Globe Press, Melbourne, Australia, 1986.
-- Smoking is not harmful, and one should be wary of anti-smoking groups.

Wiegand, Harold J., "Smoking Ban Can Go a Little Too Far," The Philadelphia Inquirer, June 29, 1985.
-- Legislation banning smoking is not the answer.

Wilbanks, William, "Is Addiction a Myth?" Miami Herald, May 22, 1988.
-- If cigarette smoking is addictive, so are many other things, e.g., coffee.

Williams, Walter E., "My Cigarettes, My Smoke, My Airspace: Property Rights of Smokers Being Violated," New York City Tribune, October 18, 1988.
-- The issue of property rights to airspace has been resolved using the coercive powers of the state.

2022711391

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

(Smoking Restrictions - cont.)

Wilson, David B., "Don't Laugh at Dr. Koop," The Record, May 26, 1988.
-- What will be Koop's next victim?"

Wilson, David B., "Koop's Meddling," Boston Sunday Globe, May 22, 1988.
-- Just another excuse for Koop to get involved.

Wilson, David B., "Sober and Smokeless," Boston Sunday Globe, January 20, 1985.
-- Smoking restrictions reverting to Prohibition days.

2022711392

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

BIBLIOGRAPHY OF BALANCED ETS ARTICLES

Adlkofer, Franz, "The Problems of Passive Smoking," Der Kassenarzt, February 3, 1987.
-- Minimal health risk from passive smoking cannot be proved.

Amiel, Barbara, "Smoke in Their Eyes," The (UK) Times, March 13, 1987.
-- Until the harm can be proven, why should we believe it?

Arundel, A., Sterling, T., and Weinkam, J., "Never-Smoker Lung Cancer Risks From Exposure to Particulate Tobacco Smoke," September 16, 1987.
-- Study on people who have never smoked before and the level of exposure.

Aviado, Domingo M., "Carbon Monoxide as an Index of Environmental Tobacco Smoke Exposure," ETS - Environmental Tobacco Smoke; Report from a Workshop on Effects and Exposure Levels, R. Rylander, Y. Peterson, M.-C. Snella, eds., Geneva, 1983.
-- Additional studies necessary to determine effect of carbon monoxide.

Aviado, Domingo M., "Health Issues Relating to 'Passive' Smoking," Smoking and Society, Toward a More Balanced Assessment, Robert Tollison, ed., D.C. Heath and Company, Lexington, Massachusetts, 1986.
-- "There is no substantial evidence to support the view that exposure to environmental tobacco smoke presents a significant health hazard to the nonsmoker."

Bake, Bjorn, "Does Environmental Tobacco Smoke Affect Lung Function?" ETS - Environmental Tobacco Smoke; Report from a Workshop on Effects and Exposure Levels, R. Rylander, Y. Peterson, M.-C. Snella, eds., Geneva, 1983.
-- If there is an effect, it is minute.

Berger, Peter L., "Environmental Tobacco Smoke: Ideological Issues and Cultural Syndromes," Clearing the Air, D.C. Heath and Company, Lexington, Massachusetts, 1988.
-- The debate over ETS will continue to be part of a larger sociocultural conflict.

Browne, Alfred, "A Haze Over the Smoker", The (UK) Times, March 10, 1988.
-- Factors for determining harm from ETS must include other dangers such as radon.

Bruce-Briggs, B., "The Health Police Are Blowing Smoke," Fortune, April 25, 1988.
-- No real data proves the harmful effects of smoking.

Bruce-Gardyne, Lord, "Smoke: A Politician's Angle," Clearing the Air, D.C. Heath and Company, Lexington, Massachusetts, 1988.
-- Politicians are subject to countervailing forces in the legislative debate over ETS.

2022711393

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

(ETS - cont.)

Buchanan, James M., "Politics and Meddlesome Preferences," Clearing the Air, D.C. Heath and Company, Lexington, Massachusetts, 1988.
-- Politics has become the low-cost means of imposing preferences on behavior.

Crawford, W. Allan, "Complexities in Developing Public Health Programs: A Public Health Consultant's View," Clearing the Air, D.C. Heath and Company, Lexington, Massachusetts, 1988.
-- More research is needed on ETS before considering public health legislation that would affect millions of people.

Crawford, W. Allan, "On the Health Effects of Environmental Tobacco Smoke," Archives of Environmental Health, January/February 1988.
-- "A double standard, one in the workplace and another for the public, may be evolving for acceptable health risks."

Duscha, Julius, "Non-smokers Getting to be Rude Pain," Lexington (KY) Herald-Leader, June 1, 1987.
-- Anti's should concern themselves with major air pollution.

Evans, Glen, "Stub Out Antismoking Zealotry", The New York Times, May 7, 1988.
-- Nonsmoking employees would have to spend a lot of time to have the smoke from other employees affect them.

Fairlie, Henry, "Guess What: Even Non-Smokers Will Die," The Richmond (VA) News Leader, June 27, 1988.
-- Everyone will die, but health nuts will have no reason.

First, Melvin W., "Environmental Tobacco Smoke Measurements: Retrospect and Prospect", ETS - Environmental Tobacco Smoke, Report from a Workshop on Effects and Exposure Levels, R. Rylander, Y. Peterson, M.-C. Snella, eds., Geneva, 1983.
-- A need for further research in specific areas of ETS.

Jarvis, Martin J., and Russell, Michael A.H., "Measurement and Estimation of Smoke Dosage to Non-Smokers From Environmental Tobacco Smoke," ETS - Environmental Tobacco Smoke; Report from a Workshop on Effects and Exposure Levels, R. Rylander, Y. Peterson, M.-C. Snella, eds., Geneva, 1983.
-- Levels of ETS are minimal.

Jenkins, Roger A., and Guerin, Michael R., "Analytical Chemical Methods for the Detection of Environmental Tobacco Smoke Constituents," ETS - Environmental Tobacco Smoke; Report from a Workshop on Effects and Exposure Levels, R. Rylander, Y. Peterson, M.-C. Snella, eds., Geneva, 1983.
-- ETS tests must be extremely sophisticated and must not include data from non-smoke pollutants.

2022711394

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

(ETS - cont.)

Lebowitz, Michael D., "The Effects of Environmental Tobacco Smoke Exposure and Gas Stoves on Daily Peak Flow Rates in Asthmatic and Non-Asthmatic Families," ETS - Environmental Tobacco Smoke; Report from a Workshop on Effects and Exposure Levels, R. Rylander, Y. Peterson, M.-C. Snell, eds., Geneva, 1983.
-- The effect of other gases on indoor air pollution. Not enough studies on sidestream smoke.

Lee, P.N., "Passive Smoking and Lung Cancer Association," Human Toxicology, 1987: 6, 517-524.
-- The risks of lung cancer explained by a misclassification of smokers and non-smokers.

Lee, P.N.; Chamberlain, J.; Alderson, M.R., "Relationship of passive smoking to risk of lung cancer and other smoking-associated diseases," Br. J. Cancer, Macmillan Press Ltd., 1986.
-- Study showing risk of major diseases associated with smoking or passive smoke is minimal.

Neuborne, Burt, "Prohibitions and Third-Party Costs: A Suggested Analysis," Clearing the Air, D.C. Heath and Company, Lexington, Massachusetts, 1988.
-- The issue of public smoking should be settled by compromise, not prohibition.

Pershagen, Goran, "Validity of Questionnaire Data on Smoking and Other Exposures, With Special Reference to Environmental Tobacco Smoke," ETS - Environmental Tobacco Smoke; Report from a Workshop on Effects and Exposure Levels, R. Rylander, Y. Peterson, M.-C. Snella, eds., Geneva, 1983.
-- Questionnaire data on smoking are likely to be inaccurate.

Powell, Jody, "Dividing Is Not Conquering: A Manager's Perspective on Workplace Smoking," Clearing the Air, D.C. Heath and Company, Lexington, Massachusetts, 1988.
-- Poorly circulated air is a health problem whether or not anyone smokes.

Reasor, Mark J., "Scientific Issues Regarding Exposure to Environmental Tobacco Smoke and Human Health," Clearing the Air, D.C. Heath and Company, Lexington, Massachusetts, 1988.
-- Further research is needed to satisfy questionable data on ETS.

Robertson, Gray, "Building-Related Illnesses: Tobacco Smoke," Clearing the Air, D.C. Heath and Company, Lexington, Massachusetts, 1988.
-- Banning smoking without addressing poor ventilation is not a proper long-term solution.

2022711395

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

(ETS - cont.)

Rondou, Rene, "Environmental Tobacco Smoke - A Smoke Screen for Management?" Clearing the Air, D.C. Heath and Company, Lexington, Massachusetts, 1988.
-- Decision-making power must lie with employees, especially concerning personal life-style choices.

Rylander, Ragnar, "Environmental Tobacco Smoke and Lung Cancer," ETS - Environmental Tobacco Smoke, Report from a Workshop on Effects and Exposure Levels, R. Rylander, Y. Peterson, M.-C. Snella, eds. Geneva, 1983.
-- There have not been enough studies to prove the link between smoking and lung cancer.

Spicer, John, "Poor Air a Cause of Office Sickness," The (UK) Times, January 27, 1988.
-- Office sickness a result of poor ventilation, not smoking.

Sterling, Theodore D., and Sterling, Elia M., "Investigations on the Effect of Regulating Smoking on Levels of Indoor Pollution and on the Perception of Health and Comfort of Office Workers," ETS - Environmental Tobacco Smoke, Report from a Workshop on Effects and Exposure Levels, R. Rylander, Y. Peterson, M.-C. Snella, eds., Geneva, 1983.
-- "Building sickness" studies show practically the same effects where smoking is and is not permitted.

Tollison, Robert D., "Introduction and Overview" and "Concluding Remarks", Clearing the Air, D.C. Heath and Company, Lexington, Massachusetts, 1988.
-- Discussion of social and political aspects of ETS issue.

Tyrell, Jr., R. Emmett, "Environmental Tobacco Smoke and the Press," Clearing the Air, D.C. Heath and Company, Lexington, Massachusetts, 1988.
-- The press campaign against environmental tobacco smoke is capricious, intolerant, and ignorant.

Waugh, Auberon, "The Big Lie which Threatens to Clean Up the World," The Spectator, March 7, 1987.
-- The "smoking scare" is based more on puritanism than on medical evidence.

Williams, Walter E., "Cigarettes and Property Rights," Clearing the Air, D.C. Heath and Company, Lexington, Massachusetts, 1988.
-- Government intervention into the ETS issue invites further government intervention into everything.

2022711396

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

CIGARETTE EXCISE
TAXES

2022711397

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

CIGARETTE EXCISE TAXES - EXECUTIVE SUMMARY (4/89)

SMOKERS ARE ALREADY TAXED ENOUGH

Smokers in this country already pay over $10 billion each year in federal, state, and local cigarette taxes. That's about $340 per year in taxes for a family with two smokers. If the federal cigarette tax doubles, a family with two smokers would have to pay over $500 per year in cigarette taxes.

STATE AND LOCAL CIGARETTE TAXES HAVE INCREASED SUBSTANTIALLY SINCE 1978

In the last 10 years, 41 states have raised taxes on cigarettes. The average state excise tax rate increased by 42%. Local cigarette tax collections have increased by 54%. Since 1978, 35 new localities have imposed taxes on cigarettes.

CIGARETTE EXCISE TAXES ARE REGRESSIVE

A smoking household earning $10,000 per year pays four times the percentage of its income in cigarette taxes over a household earning $50,000 pays. A U.S. Congressional Budget Office report concluded that an increase in the cigarette excise tax "would be the most regressive of all possible excise tax hikes." The same study also noted that 50% of the households in the country purchase tobacco products. **A federal cigarette tax increase would adversely affect the budgets of half of the families in the country.**

INCREASING CIGARETTE TAXES WILL COST JOBS

2.3 million jobs in this country are directly or indirectly related to the tobacco industry.

- If the federal excise tax on cigarettes is doubled, 184,000 jobs in the nation would be at risk. Thus 1 of every 12 people currently working in tobacco-related jobs stands to lose his or her job.

- If individual states increase their cigarette excise tax, a significant number of jobs could be lost in that state. For example, the 25 cent cigarette excise tax imposed on January 1, 1989, in California has placed over 12,000 tobacco-related jobs in jeopardy.

CIGARETTE TAXES ARE THE DOMAIN OF THE STATES

All 50 states and 425 cities and counties rely on cigarette tax revenues to fund basic services. In 1988, cigarette taxes provided states and localities with $5.1 billion in much-needed revenue. A 1989 study by the National Conference of State Legislators (NCSL) shows that federal excise taxes cost the states $3.7 billion in lost revenue from 1983-88. The study further projected, at present federal and state tax rates, excise taxes will cost the states $3.5 billion more in the next five years by eroding the revenue base due to lost sales. Moreover, a 1987 study by Peat Marwick Main & Co. estimates that doubling the federal excise tax on cigarettes would decrease state and local cigarette tax collections by $361 million in the first year, reducing funding for education, housing, and other services.

2022711398

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

THE TAX BURDEN ON CIGARETTES (4/89)

CIGARETTE EXCISE TAX COLLECTIONS, FY1978-1987

FY	GROSS FEDERAL ($000)	GROSS STATE ($000)	GROSS LOCAL ($000)	GROSS STATE SALES TAX + ($000)	TOTAL ($000)
1978	2,374,085	3,728,378	125,706	660,079	6,888,248
1979	2,356,110	3,715,498	127,752	686,461	6,885,821
1980	2,604,364	3,814,437	132,283	735,444	7,286,528
1981	2,488,221	3,960,507	163,925	793,268	7,405,921
1982	2,496,112	4,046,049	177,619	877,579	7,597,358
1983	3,424,357*	4,234,372	174,414	1,005,915	8,929,056
1984	4,749,186	4,340,973	179,683	1,132,036	10,401,877
1985	4,442,487	4,425,836	195,938	1,169,196	10,233,456
1986	4,430,815	4,539,916	198,684	1,230,860	10,400,274
1987	4,752,300	4,659,916	196,250	1,300,000	10,578,917
1988	4,570,000	4,891,806	194,210	1,384,600	11,040,616

Note: All figures for fiscal year ending June 30th.
+ Average nationwide state sales tax figure of 4.2%.
* For the first 6 months of the fiscal year, the rate was .80/carton.

AVERAGE TAX RATES ($/carton)

FY	FEDERAL EXCISE	STATE EXCISE	STATE SALES	LOCAL EXCISE	TOTAL TAX
1978	.80	1.29	.20	.30	2.59
1979	.80	1.29	.20	.30	2.59
1980	.80	1.31	.20	.30	2.61
1981	.80	1.32	.20	.30	2.62
1982	.80	1.35	.30	.40	2.85
1983	1.60*	1.47	.30	.40	3.77
1984	1.60	1.53	.40	.40	3.93
1985	1.60	1.59	.40	.50	4.09
1986	1.60	1.62	.40	.50	4.12
1987	1.60	1.69	.40	.50	4.19
1988	1.60	1.83	.40	.50	4.33

2022711399

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

STATE AND LOCAL CIGARETTE TAXES HAVE INCREASED SUBSTANTIALLY SINCE 1978

In the last 10 years, 41 states have increased their taxes on cigarettes. The average excise tax has increased 42 percent. Local cigarette tax collections have increased by 54 percent. Since 1978, 35 new localities have imposed taxes on cigarettes.[1]

HIGHER CIGARETTE TAXES LEAD TO BOOTLEGGING AND TAX EVASION

For over a decade, the states' experience with cigarette tax increases has been profoundly affected by concerns about interstate smuggling of cigarettes. Disparities in state tax rates exacerbate smuggling, its related law enforcement problems, and undermine legitimate business:

1. In 1985, the Advisory Commision on Intergovernmental Relations published a report that estimated the amount of revenue lost by the states from cigarette bootlegging in FY1983 was $255 million. This is 5.4 percent of estimated tax collections.[2]

2. In 1987, New York State's tax commissioner estimated that the state loses $25 million a year in tax revenues because of cigarette bootlegging.

Not only do states lose money from bootlegging, but so do businesses. High state cigarette taxes create hot black markets for stolen goods and force businesses to fight back with expensive measures, such as locked cigarette cases and extra security workers on trucks and in stores.

2022711400

---

[1] The Tax Burden On Tobacco: The Tobacco Institute, 1988.

[2] "Cigarette Tax Evasion: A Second Look," Advisory Commission on Intergovernmental Relations, 1985.

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

FACT SHEET: FEDERAL, STATE, AND LOCAL CIGARETTE TAXES 1951-1988

- Despite remaining at 8 cents per pack, federal cigarette excise tax revenues grew 192 percent, from $1.3 billion in 1951 to $2.5 billion in 1982. Today the tax is 16 cents per pack and this tax contributed $4.6 billion to the federal budget in 1988--an 84 percent increase since 1982.

- In 1951, 41 states and 239 localities taxed cigarettes; by 1988 all 50 states and over 425 localities taxed cigarettes--195 additional taxing jurisdictions.

- In 1951, the average state excise tax per pack was 3.4 cents, in 1988, the average state tax had risen almost sevenfold to 23.5 cents.

- In 1951, 20 states imposed their sales taxes on cigarettes which averaged 2.5 percent; in 1988, 41 states imposed sales taxes which averaged nearly 5%--more than double the average rate of 1951.

- In 1951, states and localities collected $503 million in cigarette excise taxes. By 1988, they collected $5.1 billion in cigarette excise taxes--an increase of 911 percent or over nine times the 1951 revenues.

- State and local cigarette tax revenues have on average doubled every 6 years since 1951.

- In 1951, state sales taxes on cigarettes yielded approximately $53 million in revenue; by 1988 state sales taxes provided $1.376 billion in revenue--an increase of 2496 percent, almost 25 times the 1951 revenue.

- In 1951, all governments, federal, state and local, collected $1.85 billion in cigarette tax revenues; in 1988, all governments collected over $10 billion--over five and a half times the 1951 revenue.

(4/89)

2022711401

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

CIGARETTE TAX INCREASES COMPARED TO PRICE INCREASES (4/89)

	1951	1988	Increase
Producers' Price Index	91.1	322.0	253%
Consumer Price Index	77.8	340.4	356%
Weighted Avg. Cigarette Tax Rate for All Taxing States and Localities	3.4¢	23.3¢	585%
State Cigarette Excise Tax Collections	$466M	$4,892M	950%
Local Cigarette Excise Tax Collections	$37.5M	$194.2M	418%
Aggregate State and Local Excise Tax Collections from Cigarettes	$503M	$5,086M	911%
Sales Tax Collections from Cigarettes	$53M	$1,376M	2,496%
Aggregate Federal, State, and Local Tax Collections from Cigarettes (Excise and Sales)	$1,850M	$11,032M	496%

Conclusion:

By any of these six measures, cigarette taxes have not only kept pace with inflation, but have exceeded it. Thus, the real tax burden on cigarettes has steadily increased over the last 37 years.

2022711402

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

EXCISE TAXES ARE REGRESSIVE (4/89)

1. Two studies substantiate the claim that excise taxes are regressive, that is they fall most heavily on those least able to pay:

   a. First, a study prepared by the Congressional Budget Office[1] (CBO) in January 1987 for Senator George Mitchell (D-Maine) shows that federal excise taxes impose the greatest economic burdens on those least able to pay. The study concludes that "an increase in the excise tax on tobacco would be the most regressive of all the tax increases considered."

   The CBO study also concluded that an increase in the tax on cigarettes would raise taxes as a percentage of income by five times as much for families with incomes below $10,000 as for families with incomes of $50,000 or more.

   b. Second, a study by the Policy Economics Group[2] estimated that families with incomes under $10,000 will lose almost five times the benefits they received from tax reform if the federal excise tax is doubled. While tax reform cut income taxes by $400 million for families in this group, an excise tax increase of this magnitude would raise their taxes by nearly $2 billion.

   The Policy Economics study also concluded that a family earning $10,000 will, on average, spend .29 percent of its income in federal cigarette excise taxes, whereas a family earning $50,000 will on average spend only .07 percent of its income in federal cigarette excise taxes. The proportion of income spent on federal cigarette taxes by the poorer family is over four times greater than that of the wealthier family.

2. Of the $4.6 billion collected in federal cigarette excise taxes in FY1988, 37.5% of it was paid by families earning less than $20,000. Families earning $50,000 or more paid only 13.8% of this amount.

---

1 "The Distributional Effects of an Increase in Selected Federal Excise Taxes," Congressional Budget Office, 1987.

2 "An Analysis of the Regressivity of Excise Taxes," Policy Economics Group, May, 1987.

2022711403

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

3. People earning less than $10,000 annually accounted for 2.7 percent of TOTAL income in 1986, but paid 12.7 percent of the tobacco tax. Those earning $100,000 or more annually accounted for 14.9 percent of TOTAL income, but paid only 3.8 percent of the tobacco tax.[3]

4. A 1989 study done for the Coalition Against Regressive Taxation[4] concluded that the federal tax system has become less progressive over the period 1979-1989 as the shares of taxes paid by lower-income and middle-income taxpayers have increased and the share paid by upper income taxpayers has decreased. Therefore, an increase in the cigarette excise tax would make the system even less progressive.

   The study also stated, "The earned income credit as structured under current law is poorly designed to offset the effects of specific tax changes, such as increases in excise taxes, among lower-income families. In fact, this distribution would be substantially more uneven than the distribution generated by an excise tax increase without an earned income credit offset."

5. Were excise taxes on cigarettes, gasoline, and alcohol to increase to obtain revenue targets of $19 billion, the combined tax rate would amount to 2.7% of income for the lowest income group in 1986, versus 0.7% for the top income group.[5]

---

[3] The Tobacco Institute, 1988

[4] "Changes in the Progressivity of the Federal Tax System: 1979 to 1989," Prepared for the Coalition Against Regressive Taxation by the Policy Economics Group, April 1989.

[5] "Meeting The Revenue Targets In The 1988 Budget: Will Tax Reform Be Extended Or Undermined?," Citizens For Tax Justice, May 1987.

2022711404

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

EXCISE TAX INCREASES HARM THE ECONOMY THROUGH LOST JOBS, LOST FARM INCOME, AND REDUCED INCOME TAX REVENUE (4/89)

1. Economists generally agree that excise tax increases are passed on to the consumer in the form of higher prices. This results in lower demand for the products taxed.

2. The federal cigarette excise tax was doubled in January 1983 with the following results:

   - tobacco leaf sales declined by 30 million pounds; GNP was reduced by $800 million.

   - 14,600 workers in tobacco manufacturing and distribution lost job opportunities; included were the closings of several cigarette production facilities in Louisville, KY (Lorillard, 1985), Petersburg, VA (B&W, 1986), Durham, NC (American, 1987), and Richmond, VA (American, 1987), causing the layoff of 2,500 workers.

   - 10-15,000 farmers have been forced to abandon tobacco farming. In 1983-84, in large part because of the doubling of the excise tax, the tobacco farmer, on average, suffered a decline of one-third in the cash value of his crop.

3. There are approximately 710,000 American jobs directly related to the tobacco industry. It is estimated that over 57,000* of these jobs would be at risk if the current excise tax increase proposals were enacted. Direct job loss would affect not only the workers and farmers immediately involved, but unemployment effects would ripple throughout the communities where the crops are raised and the products manufactured.

4. Indirect losses in jobs and income would be even greater. Expenditures on goods and services by people directly employed in the tobacco industry create another 1,590,000 jobs in the country. An additional 127,000 jobs stand to be lost in the indirect sectors if the federal cigarette tax doubles.

5. All told, the man-hour equivalent of 184,000 jobs will be jeopardized if the federal excise tax on cigarettes is doubled. Thus 1 of every 12 people currently working in tobacco-related jobs stands to lose his or her job. The jobs of truckers who transport cigarettes, stockroom clerks who store them, and checkout clerks who sell them would be lost in every state.

2022711405

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

6. The increase in unemployment and farming income will reduce federal and state income tax collections, offsetting the increase in excise tax collections, and will give rise to additional costs in unemployment insurance and welfare benefits.

Source: "The Economic Impact of the Tobacco Industry on the United States Economy," Chase Econometrics.

*Note: Uses House Budget Committee's assumption that a $1.60 per carton tax increase would reduce cigarette sales by 8%.

2022711406

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

FEDERAL EXCISE TAXES INHIBIT THE STATES' ABILITY TO RAISE REVENUE (4/89)

STATUS

"[State] Tax revenues have fallen ... forcing elected officials to consider tax increases and spending cuts to patch their wounded budgets ..." proclaims a New York Times report (3/14/89). States and cities are experiencing the largest shortfalls since the 1975 recession. Twenty-four states cut their budgets in fiscal year 1987. Eleven states cut their budgets in fiscal year 1988, totaling $903 million. Conservative accounting approaches show the aggregate surplus of the fifty states plunged from more than $20 billion in 1986 to $3 billion at the end of 1988. Tax increase proposals are now being considered by many. Struggling the most are the energy-producing and farm states, now trying to cope with declining sales-tax and income-tax revenues. Local governments on the East and West coasts are trying to fill the hole left by the loss of federal revenue sharing, a $4.6 billion program that expired in 1986.

All 50 states and 425 cities and counties rely on cigarette tax revenues to fund basic services to their citizens. In 1988, cigarettes provided states and localities with $6.4 billion in much-needed revenue.[1] Increasing the federal cigarette excise tax would decrease state and local tax collections, and would reduce funding for education, housing, and other services.

SUMMARY ARGUMENTS

1. A 1989 study conducted by the National Conference of State Legislatures (NCSL) shows that federal excise taxes cost the states $3.7 billion in lost revenue from 1983-88. The study further projected that, at present federal and state tax rates, excise taxes will cost the states $3.5 billion more in the next five years.[2] Moreover, a 1987 study by Peat Marwick Main & Co. estimates that doubling the federal excise tax on cigarettes would decrease state and local tax collections by $316 million in the first year, reducing funding for education, housing, and other services.[3]

---

[1] The Tax Burden on Tobacco, The Tobacco Institute, 1988.

[2] "The Impact of Higher Federal Excise Taxes on State Finances," National Conference of State Legislatures, January 1989.

[3] "Effects of Federal Excise Tax Rate Increases on State Excise Tax Revenues," The Policy Economics Group, Peat Marwick Main & Co., 1987.

2022711407

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

2. Due to current federal excise tax rates, funds provided to the localities by the states have already declined by $562 million since 1983, and it is estimated that they will lose $533.5 million more by 1992. If the federal excise tax is increased, localities would lose an additional $37.6 million.[1,3,4]

3. Education programs in the states have lost $82.3 million and, by 1992, these programs will lose an additional $82.3 million. If the federal excise tax is increased, state education programs would lose an additional $17.3 million.[1,3,4]

IMPACT

"State and local governments have traditionally relied on excise taxes for a large part of their revenue mix. Following the elimination of General Revenue Sharing and other federal programs, excise taxes have become an even more important financing mechanism to enable the states to take on the responsibilities abandoned by the federal government. Any effort by Congress to raise federal excise taxes will inevitably diminish the ability of state and local governments to finance the delivery of vital public services." (Senators George Mitchell (D-Maine) and David Durenberger (R-Minnesota) in a "Dear Colleague" letter, May, 1987.)

---

[4] "Earmarking Excise Taxes," National Conference of State Legislatures, 1987.

2022711408

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

TABLE 1

Revenue Losses to LOCALITIES Due to Current Federal Excise Taxes
($Millions)

State	1983-1988 Cigarettes	1983-1988 Distilled Spirits	1983-1988 Gasoline	1983-1988 Total Loss	1988-1992 Projected Loss
Alabama	--	--	$24.1	$24.1	$22.3
Arkansas	--	--	$10.1	$10.1	$9.9
California	$15.3	--	$106.4	$121.7	$120.3
Colorado	$3.2	--	--	$3.2	$2.7
Florida	$33.2	--	$44.3	$77.5	$68.1
Indiana	$12.5	$.3	$33.0	$45.8	$43.9
Kansas	--	$.07	$12.4	$12.5	$11.4
Louisiana	$10.3	--	--	$10.3	$8.2
Maryland	$3.0	$.3	$17.0	$20.3	$20.2
Massachusetts	$11.3	--	$49.2	$60.5	$50.3
Minnesota	--	--	$26.1	$26.1	$23.0
Mississippi	--	--	$7.6	$7.6	$9.1
Missouri	--	--	$12.6	$12.6	$14.2
Montana	--	--	$2.8	$2.8	$2.7
Nevada	$2.3	$.08	$6.0	$8.4	$9.0
New Hampshire	--	--	$1.6	$1.6	$1.4
New Mexico	$.8	--	$2.8	$3.6	$3.5
North Dakota	$.4	--	$4.4	$4.8	$4.8
Oklahoma	--	$.2	$16.2	$16.4	$18.8
Oregon	$1.2	--	$7.8	$9.0	$8.2
Pennsylvania	--	--	$4.8	$4.8	$4.2
South Carolina	--	$.2	$3.9	$4.1	$4.1

2022711409

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

TABLE 1 (cont.)

Revenue Losses to LOCALITIES Due to Current Federal Excise Taxes
($Millions)

State	1983-1988 Cigarettes	Distilled Spirits	Gasoline	Total Loss	1988-1992 Projected Loss
South Dakota	--	$.1	$1.4	$1.5	$1.3
Tennessee	--	$1.0	$35.7	$36.7	$37.9
Texas	--	$.9	$2.3	$3.2	$3.7
Washington	--	$.6	$31.6	$32.2	$29.9
Wyoming	$.6	--	--	$.6	$.4
Total	$94.1	$3.7	$464.1	$562.0	$533.5

Sources:

The Impact of Higher Federal Excise Taxes on State Finances, National Conference of State Legislatures, 1989.
TMA Guide to Tobacco Taxes, Tobacco Merchants Association.
Earmarking State Taxes, National Conference of State Legislatures, 1987.

2022711410

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

TABLE 2

Revenue Losses to EDUCATION PROGRAMS Due to Current Federal Excise Taxes
($Millions)

State	1983-1988 Cigarettes	Distilled Spirits	Gasoline	Total Loss	1988-1992 Projected Loss
Alambama	$4.2	--	--	$4.2	$3.4
Alaska	$.8	--	--	$.8	$.7
Michigan	$4.6	--	--	$4.6	$3.6
Missouri	$10.9	--	--	$10.9	$8.3
Nebraska	$.9	--	--	$.9	$.8
South Carolina	--	$.6	--	$.6	$.9
Tennessee	$15.9	$.1	--	$16.0	$11.7
Texas	$2.7	$.8	$56.7	$60.2	$64.5
Total	$40.0	$1.5	$56.7	$98.2	$93.9

Sources:

The Impact of Higher Federal Excise Taxes on State Finances, National Conference of State Legislatures, 1989.
TMA Guide to Tobacco Taxes, Tobacco Merchants Association.
Earmarking State Taxes, National Conference of State Legislatures, 1987.

2022711411

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

TABLE 3

STATES IN WHICH LOCALITIES WOULD LOSE REVENUE IF FEDERAL EXCISE TAXES INCREASE

State	Amount localities would lose in excise tax revenues from the following products: ($Millions)			
	Cigarettes	Alcoholic Beverages*	Gasoline	Total
Alabama	---	$.2	$2.9	$3.1
Arkansas	---	---	$1.4	$1.4
California	$7.0	---	$13.0	$20.0
Colorado	$1.1	---	---	$1.1
Florida	$14.2	---	$5.1	$19.3
Idaho	---	$.1	---	$.1
Indiana	$6.7	$.4	$4.4	$11.5
Iowa	---	$.3	---	$.3
Kansas	---	$.09	$1.5	$1.6
Louisiana	$4.8	$.05	---	$4.9
Maryland	$1.4	$.4	$2.4	$4.2
Massachusetts	---	---	$6.0	$6.0
Minnesota	---	---	$3.3	$3.3
Mississippi	---	---	$1.1	$1.1
Missouri	---	---	$1.9	$1.9
Montana	---	$.04	$.4	$.4
Nevada	$.9	$.1	$.8	$1.8
New Hampshire	---	---	$.2	$.2
New Mexico	$.3	---	$.4	$.7
North Carolina	---	$1.4	---	$1.4
North Dakota	$.3	---	$.6	$.9
Oklahoma	---	$.4	$1.8	$2.2

2022711412

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

Oregon	$.6	$.3	$1.1	$2.0
Pennsylvania	---	---	$.6	$.6
South Carolina	---	$.7	$.5	$1.2
South Dakota	---	$.3	$.2	$.5
Tennessee	---	$1.3	$4.8	$6.1
Texas	---	---	$.4	$.4
Utah	---	$.5	---	$.5
Virginia	---	$.9	---	$.9
Washington	---	$.3	$3.7	$4.0
Wyoming	$.3	---	---	$.3
Total	$37.6	$7.2	$58.6	$103.3

* Alcoholic beverages include beer, wine, and distilled spirits.
+ Totals may not add to material figures due to rounding.

Note:
Table reflects the following assumed increases in federal excise tax rates:

Cigarettes - 16 cents per pack
Gasoline - 5 cents per gallon
Distilled Spirits - $2.50 per proof gallon
Wine - 52 cents per bottle
Beer - 49 cents per six pack

Sources:

Effects of Federal Excise Tax Rate Increases on State Excise Tax Revenues, The Policy Economics Group of Peat Marwick Main & Co., 1987.
TMA Guide to Tobacco Taxes, Tobacco Merchants Association.
Earmarking State Taxes, National Conference of State Legislatures, 1987.

2022711413

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

TABLE 4

STATES IN WHICH EDUCATION PROGRAMS WOULD LOSE REVENUE IF FEDERAL EXCISE TAXES INCREASE

STATE	Amount education programs would lose in excise tax revenues from the following products: ($Millions)			
	Cigarettes	Alcoholic Beverages*	Gasoline	Total
Alabama	$1.7	$.3	---	$2.0
Alaska	$.4	---	---	$.4
Arizona	---	$.01	---	$.01
Idaho	---	$.03	---	$.03
Michigan	$1.9	$.4	---	$2.3
Missouri	$4.6	---	---	$4.6
Nebraska	$.4	---	---	$.4
South Carolina	---	$2.0	---	$2.0
Tennessee	$7.1	$.1	---	$7.2
Texas	$1.1	$1.2	$8.8	$11.1
Utah	---	$.4	---	$.4
Total	$17.3	$4.4	$8.8	$30.6

* Alcoholic beverages include beer, wine, and distilled spirits.
+ Totals may not add to material figures due to rounding

Note:
Table reflects the following assumed increases in federal excise tax rates:
Cigarettes - 16 cents per pack
Gasoline - 5 cents per gallon
Distilled Spirits - $2.50 per proof gallon
Wine - 52 cents per bottle
Beer - 49 cents per six pack

Sources:
Effects of Federal Excise Tax Rate Increases on State Excise Tax Revenues, The Policy Economics Group of Peat Marwick Main & Co., 1987.
TMA Guide to Tobacco Taxes, Tobacco Merchants Association.
Earmarking State Taxes, National Conference of State Legislatures, 1987.

2022711414

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

THERE IS NO NEED FOR AN INCREASE IN THE FEDERAL CIGARETTE EXCISE TAX
(4/89)

1. President Bush's budget calls for the federal government to spend $1.6 trillion in 1990, an increase of $14 billion over 1989 levels.

2. The Congressional Budget Office predicts a revenue increase of $87 billion in 1990.

3. Federal tax revenues have climbed from $517 billion in 1980 to an estimated $979 billion in 1989, an increase of approximately 89 percent.

4. Over the 1980-89 period, revenues grew by an average of about $51 billion yearly. In the last six years, tax revenues have grown by an average of more than $63 billion annually.

5. In October 1988, the Congressional Budget Office examined the entire range of federal taxes, including personal and corporate income taxes, social security taxes, and excise taxes. The CBO found that the vast majority of American families are actually paying a higher share of their incomes in overall federal taxes than they did ten years ago.

6. The total tax burden is at an all-time high, according to the Tax Foundation. The average American works until May 6 to pay all federal, state, and local taxes.

7. The actual growth of tax revenues, like federal spending, has easily outstripped the inflation rate.

8. A complete freeze on federal spending would create a budget surplus in as little as two years.

9. The Congressional Budget Office projects that tax revenues will grow by nearly $300 billion over the next four years, but only about $160 billion in revenue growth is needed to eliminate the deficit.

10. Lawrence B. Lindsey, Associate Professor of Economics, Harvard University, and Facility Research Fellow, National Bureau of Economic Research, believes, "[Federal] excise taxes on cigarettes, stock transfers and gasoline are likely to be far more costly than their proponents suggest." At the very least, these taxes take away from 1986 tax reform and deprive states of needed revenue.

Source: Citizens for a Sound Economy; February 10, 1989

2022211415

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

1986 TAX REFORM BENEFITS LOST (4/89)

If Congress increases excise taxes to raise $10 billion or more, all of the tax relief from the Tax Reform Act of 1986 that was given to families with incomes below $20,000 will be taken back. In fact, an excise tax increase of this magnitude would raise the taxes of low-income families disproportionately, and would more than offset the income tax reduction these taxpayers received from tax reform.

1. A study by the Policy Economic Group estimated that families with incomes under $10,000 will lose almost five times the benefits they received from tax reform. While tax reform cut income taxes by $400 million for families in this group, an excise tax increase of the magnitude being suggested by Congress would raise their taxes by nearly $2 billion.

   The wealthiest Americans, however, those who already received substantial tax savings when the top tax rate was reduced from 50 to 28%, will lose only two percent of the tax relief they received from tax reform.[1]

2. Senator George Mitchell (D-Maine) made the following comments in Congress on May 6, 1987:

   "A $10 billion increase in excise taxes this year will wipe out the tax cut of last year for all those, on average, making below $10,000, and all those whose incomes are between $50,000 and $100,000. Those between $10,000 and $40,000 will lose most of their tax cut of last year. The only group that will be better off overall will be the 2 percent of American families whose incomes exceed $100,000."[2]

3. An increase in the Earned Income Credit has been suggested as a possible means of offsetting the large burden on lower-income families from an increase in excise taxes. A 1989 study done for the Coalition Against Regressive Taxation concluded that this logic was incorrect. In fact, it is substantially more uneven than the distribution generated by an excise tax increase without an earned income credit offset. "The earned income credit as structured under current law is poorly designed to offset the effects of specific tax changes, such as increases in excise taxes, among lower-income families."[3]

---

1 "An Analysis of the Regressivity of Excise Taxes," Policy Economics Group, May 1987.

2 Congressional Record, May 1987

3 "Changes in the Progressivity of the Federal Tax System: 1979 to 1989," Prepared for the Coalition Against Regressive Taxation by the Policy Economics Group, April 1989.

2022711416

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

AD VALOREM EXCISE TAXATION (4/89)

STATUS

Ad valorem excise taxes are taxes on particular classes of products; they vary in specific amount according to the price of the product. A 10% ad valorem tax on cigarettes would yield 8 cents on a pack costing 80 cents and 10 cents on a pack costing $1.00. By contrast, specific excise taxes levy a single tax amount on a given quantity of cigarettes regardless of price. In the above example, if the specific tax were 10 cents per 20 pack, the state would collect 10 cents on each 20 pack regardless of its price.

Hawaii is the only state with an ad valorem excise tax on cigarettes. New Jersey levies an ad valorem surtax in addition to a specific excise tax. Among localities, New Orleans has a 10% excise tax on tobacco products. Forty states impose a sales tax--a general ad valorem tax--on cigarettes at the same rate (average 4.3%) as on other products. It is collected at the point of sale and generally imposed on the cigarettes' base selling price plus all excise taxes.

SUMMARY ARGUMENTS

Ad valorem taxes are poor public policy for several reasons:

1. **They Inject Great Uncertainty Into Tax Revenues.** Ad valorem taxes go up and down with the price of the product, and consumers tend to change not the number of cigarettes they buy, but the price class of the cigarettes they buy. It is relatively easy to predict how many cigarettes will be sold, but very difficult to predict sales by price class. State cigarette taxes based on so many cents per cigarette are a predictable and sure source of revenue.

2. **They Are Very Difficult To Administer And Collect.** Prices of cigarettes vary from brand to brand, wholesaler to wholesaler, and retailer to retailer. Therefore, it is almost impossible for the tax agency to know what it should be receiving in revenues.

3. **They Are Susceptible To Price Manipulation.** Wherever the tax is levied, businesses could set an artificially low price to minimize the tax and then raise the price at another point in the distribution chain after the tax has been assessed. States would lose revenue, thereby defeating the purpose of the tax.

4. **They Encourage Poor Quality In Products.** Because cheaper items are taxed less, manufacturers will produce items with lower quality.

5. **They Impose Varying Tax Burdens In An Irrational Manner.** Taxes would be levied at the same rate on a pack of 25 cigarettes as they would on a pack of 20 cigarettes as long as the prices were the same.

2022711417

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

6. **They Subsidize Price Cutting On Cigarettes.** Whenever a cigarette distributor reduced his price, the state tax would fall by an amount equal to the ad valorem rate and reduce the price further at taxpayers' expense. If, for example, the ad valorem rate was 10% and the distributor cut his price by $2.00 per carton, state taxes would fall by 20 cents per carton and overall prices to consumers would fall $2.20. The taxpayers would be subsidizing the cigarette price at 20 cents per carton.

7. **They Are Inflationary And Increase Government Spending.** Every wholesale price rise is multiplied by the tax into a larger retail price increase. Higher retail prices increase government spending on programs indexed to inflation, thus absorbing any added tax revenues.

8. **They Are "Hidden Taxes."** The tax is incorporated into the price of goods and services, and not distinguished as a "tax." This makes it deceptive. The government can then increase the tax, frequently and substantially, without people being aware of the extent to which they are being burdened.

IMPACT

The federal government, 49 states, and several hundred localities have all rejected ad valorem taxes on cigarettes. In testimony before the Senate Finance Committee (4/21/86), Assistant Treasury Secretary J. Roger Mentz restated the reason for rejecting ad valorem taxation of cigarettes:

> "Changing to an ad valorem basis would require significant changes in administrative practice and raise compliance problems, for example, through the manipulation of intercompany transfer prices."

If the federal government, with all its resources, does not think it could administer an ad valorem tax, a state would be foolhardy to attempt it. Why gamble with a proven, stable source of revenue--the specific excise tax on cigarettes--by substituting an untried form of taxation, the ad valorem excise?

2022711418

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

CIGARETTE EXCISE TAXES: INDEXATION (4/89)

STATUS

Proponents of increased taxation on cigarettes sometimes argue that excise taxes have been declining as a percentage of the price of a pack. The remedy allegedly lies in annually adjusting the excise tax rate based on some gross economic measurement, such as the Consumer Price Index (HR 1233, Beilensen) or per capita gross national product (HR 200, Roybal). The real value of the tax, it is argued, will therefore remain steady.

SUMMARY ARGUMENTS

1. **Indexation Can Fuel Inflation.** An increase in the general level of prices increases the excise tax rate, which increases prices further, which pushes up the price index still further, and so on. This inflationary spiral works to the detriment of economic objectives like growth, trade surpluses, full employment.

2. **Indexation Leads To Higher Base Taxing Rates.** The government may impose additional tax increases on top of the adjusted rate.

3. **Indexation Can Damage The Wider Economy.** The development of the tobacco industry becomes linked to something external and uncontrollable. Indexation can cause distortions over and above those imposed by the excise tax itself. Government and the industry will be unable to predict revenues satisfactorily, and because of the impact of the industry on employment, revenues, and the balance of trade, indexation will have wide adverse effects on the economy.

4. **What Is A Suitable Index?** The tax level should take account of government objectives, economic and industry objectives, and social welfare considerations. Indexation does not incorporate or help in achieving any of these.

2022711419

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

CIGARETTE EXCISE TAXES: EARMARKING (4/89)

STATUS

Twenty states earmark their cigarette tax revenues. Of these 20, 8 states earmark all or some of their cigarette tax revenues for health programs; 8 states for building or highway maintenance; 5 states for environmental matters; 6 states for education: and 11 states for local aid:

	1980	1981	1982	1983	1984	1985	1986	1987	1988
Bills introduced:	20	15	29	22	35	106	90	79	58
Bills enacted:	3	2	1	3	3	12	3	5	2
Percent:	15%	13.3%	3.4%	13.6%	8.6%	11.3%	4.4%	5.1%	1.7%

Source: The Tobacco Institute

SUMMARY ARGUMENTS

A 1987 study by the National Conference of State Legislatures[1] concluded that:

- **earmarking interferes with resource allocation decisions by neglecting other programs that are in need of financing;**
- **earmarking may actually decrease spending for social programs;**
- **an important effect of earmarking frequently is to increase political support for raising revenue to a higher level than otherwise would be feasible.**

1. **Earmarking Can Hamper Effective Budgetary Control.** Effective fiscal management requires legislatures to weigh the relative merits of each state program in terms of the total funds available. Earmarking results in the inflexible, automatic allocation of funds outside of this process.

2. **Earmarking Can Lead To A Misallocation Of Funds,** giving excess revenues to some functions, while others are under-funded. There is no necessary, or even probable, relationship between the revenue yield from a dedicated source, and the most reasonable level of expenditure on the designated activity.

3. **Earmarking Misleads The Public.** Many people are led to believe that earmarking a tax, fee or lottery leads to increased spending on a particular program when the actual effect may be the opposite. It all depends on the funding levels prior to earmarking.

4. **Earmarking Results In Revenue Instability.** Earmarked revenues from a dedicated source, such as cigarettes, will decline if sales or use of the particular service or product decline. Designated revenue recipients, therefore, may be subject to sudden shortfalls in funding.

2022711420

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

5. **The Source Of Earmarking Funds Is Discriminatory.** The ostensible logic for earmarking cigarette excise taxes for health programs is that the health cost burden would be imposed directly on the consumers of a product held responsible for those medical costs. However, to earmark services that have little or nothing to do with the taxed product, and that benefit the general public, is discriminatory. Higher teachers' salaries, road improvement, or the construction of a new public library are areas where everyone should share the burden. (See social costs.)

6. **Smokers Already Pay Enough Taxes.** In 1988, federal, state, and local governments collected more than $10 billion in cigarette excise taxes. Since 1861, when the first cigarette excise tax was levied, American smokers have paid more than $200 billion in excise taxes to support government services -- services provided to all.[2]

---

[1] "Earmarking State Taxes," National Conference of State Legislatures, 1987.

[2] Tax Burden On Tobacco, The Tobacco Institute, 1988

2022711421

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

APPROVED AND PENDING
FEDERAL, STATE, AND LOCAL BILLS
WHICH EARMARK CIGARETTE TAX REVENUE
1985-1988

Year		Earmarked Fund	Proposed Tax Increase	Status
1988				
	FEDERAL			
	HR 5045	90% of revenue increase to **Anti-Illicit Drug Account** & 10% to **Alcohol & Tobacco Related Addiction Funds**	$.02	DIED
	HR 4990	$15 billion/yr to **Publicly Owned Low-Income Housing**	$.16	DIED
	HR 4740	10% of new revenue to **"programs to discourage cigarette smoking particularly by youth,"** remainder to **"smoking cost recovery"** (i.e., deficit reduction)	$.25	DIED
	STATE			
	CA ACA66	All new revenue to "tobacco-related" **Health Education, Disease Research, and Treatment of Environmental Damage Programs**	$.50	DIED
	CA PROP99	All new revenue to **Health Programs, Fire Prevention, Environmental Programs**	$.25	BALLOT PROPOSITION APPROVED
	CA S2133	50% of funds raised from cigarette & OTP taxes for **"prevention of tobacco-related diseases"**	$.20	AMENDED OUT
	CA S2528	$5 mil/yr from cigarette & OTP taxes for **California Cancer Prevention & Early Detection Grants Program**	$.20	SPONSOR WITHDREW
	CA ACA14	Revenues to **Anti-Tobacco programs in schools, Medical Research Grants, Medi-Cal, Fire Prevention, and Litter Control programs**	$.25	NOW CA PROP99 APPROVED 11/8/88
	CO TAXINIT	95% of new revenue to **Indigent Health Care**; 5% for **"prevention, education, & research programs in smoking-related diseases"**	$.20	FILED INITITIATIVE
	FL S1035	1% of all revenue to be earmarked for the Alcohol Beverage and Tobacco Tax Trust Fund	----	DIED
	LA H269	Earmark 1 cent of new 9 cent tax for existing Cancer and Lung Trust Fund; of remainder, one-third to Health Education; one-third to local governments; one-third to general fund	$.09	DIED

2022711422

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

MA H4734	New revenue for Chronic Pulmonary Disease Research	$.04	DIED
MI H5122	New revenue for Education Improvement	$.05	CARRYOVER
MI H5151	New revenue for AIDS Research & Treatment and Michigan Health Initiative	$.06	CARRYOVER
MI H5167	4-cents to Wayne County deficit reduction & jails; 1-cent to Health Initiative; 1-cent to County Public Health Programs	$.06	CARRYOVER
MI H5436	New revenue for Department of Social Services programs to shelter the homeless	$.01	DIED
MI S545	2-cents to Michigan Health Initiative; 4-cents to AIDS Treatment Trust Fund	$.06	CARRYOVER
MI S555	New revenues to School Improvement Fund	$.05	CARRYOVER
MN H2182	Revenues from 2-cents of current tax to Environmental Trust Fund	----	APPROVED 4/28/88
NJ A110	1/12 of surtax revenue to Cancer Research	----	DIED
NJ A856	New revenue to "Addiction Education & Rehabilitation Fund"	$.01	DIED
NJ A1252	New revenue to Long-Term Illnesses and Cancer Research	$.05	DIED
NJ A1715	1/2-cent of current tax to Cancer Research	----	DIED
NM H32	Redirect earmarked funds to Recreational Programs	----	DIED
NM S85	Earmark 1 cent for Health Research	$.09	DIED
OH H456	New revenue for Cancer Research	$.05	CARRYOVER
OR TAX-INIT	New revenue for State College Athletic Programs	$.01	BALLOT
PA H1061	New revenue for Agricultural Assistance Fund	$.02	CARRYOVER

2022711423

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

PA S1339	1/2 cent per pack for **Volunteer Fire Company Challenge Grant Fund**	----	DIED
PA S1389	New Revenue for **Cancer Research** at Penn State, U. of Pennsylvania, and U. of Pittsburgh	$.05	DIED
RI H8482	Earmarked to subsidize **Health Insurance** premiums for uninsured persons	$.18	DIED
RI H9032	Earmarked for **Drug Abuse Education**	$.01	DIED
RI H9135	Earmarked for create an **Adolescent Substance Abuse Prevention Program**	$.02	DIED
RI S2157	Earmarked for **Hospital Funds For The Uninsured**	$.025	DIED
RI S3299	Earmarked for **Drug Abuse Programs**	$.01	DIED
SC H2485	Earmarked for **Cancer and Lung Disease Fund**	$.10	DIED
WI A38	Earmark increased revenues for **Public Health Health Education**	$.05	DIED
WI A 364	Earmarked for **Health Insurance Fund**	$.05	DIED
WI S262-A	Earmarked for **Health Education Funds**	$.03	DIED
WI A390-A	Earmarked for **Health Care Program**	$.03	DIED

LOCAL

COFFEE COUNTY AL88-505	New revenue for **Fire Protection**	$.05	DIED
DEKALB COUNTY AL88-483	New revenue for hiring **additional county employees**	$.01	DIED
HOUSTON COUNTY AL88-485	New revenue for **Volunteer Fire Departments & Senior Citizen Programs**	$.05	APPROVED 6/27/88
MARION COUNTY AL88-488	60% of revenue to **County Water Authority**, 40% to **Volunteer Fire & Rescue Association**	$.04	DIED
MARSHALL AL87-253	New revenue for **Fire Departments** and **Rescue Squads**	$.02	APPROVED 6/7/88
MILLBROOK AL88-431	Revenue to help pay for new **Utility System**	$.05	DIED

2022711424

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

1987

FEDERAL			
HR 493	New revenue for Federal Hospital Insurance Trust Fund	$.16	DIED
HR 1182	New revenue to U.S. Dept. of Health for grants to states for Medicare option for catastrophic care	$.005	DIED
HR 200	New revenue for "USHealth Trust Fund"	$.16	DIED
HR 1930	50% of new revenue to "Federal Medigap Insurance"; 50% to expanded Medicaid coverage	$.16	DIED
HR 2104	New revenue for Federal Hospital Insurance Trust & Tobacco-Related Disease Research	$.16	DIED
HR 2696	Payments to health insurance carriers providing program coverage	$.08	DIED
HR 678	50% of tobacco excise tax collections for Medicare Part C Trust Fund	----	DIED
STATE			
CA TAX INIT	New revenue for various Health, Fire Prevention, and Environmental Conservation Programs	$.25	FILED INITIATIVE
ID H61	Increase allocations to Cancer Research Program; Water Pollution Fund; and Permanent Building Fund	----	APPROVED 4/1/87
IN H1533	New revenue for Maternal & Child Health Care, and Soil Conservation & Lake Enhancement programs	$.05	APPROVED 5/7/87
MI S571	All revenue for Wayne County Deficit until 10/88 after which most to same, with part to Indigent Medical Care and part to Health Departments	$.04	APPROVED 12/22/87
MN H529	Revenue for Health Care and Construction Programs	$.15	APPROVED 5/28/87
NE L218	2-cents of tax to bonding for Renovation of Facilities at State Universities	$.02	APPROVED 5/29/87

2022711425

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

LOCAL			
COFFEE COUNTY AL86-54	New revenue for **County Firefighters**	$.05	APPROVED 7/28/87
FAYETTE AL87-122	New revenue for **Fayette Park & Recreation**	$.02	APPROVED 2/2/87
DALE COUNTY AL86-64	Revenues for **Volunteer Firefighters**	$.05	APPROVED 1/20/87
MARSHALL AL87-253	New revenue for **Fire Department & Rescue Squads**	$.02	DIED
EXCELSIOR SPRINGS MO87-328	New revenue for building a new **Police Station**	$.05	APPROVED 8/4/87
REPUBLIC MO87	Revenue to build a new **Firehouse**	$.03	APPROVED 4/7/87
1986			
STATE			
WA S4519	New revenue for **Puget Sound Clean-Up** and other **Waterways projects**	$.08	APPROVED 2/21/86
RI H7542	Repeals earmarking for **Cancer Registry** enacted in 1985	$.016	APPROVED 6/26/86
OH H583	Revenue for construction of **Major League Sports Facilities**	$.045	APPROVED 2/20/86
NM S94	New revenue to **Cancer Research**	$.03	APPROVED 3/6/86
LOCAL			
COFFEE COUNTY AL860006	New revenue for **County Firefighters**	$.05	DIED
DALE COUNTY AL860007	New revenue for **Volunteer Firefighters**	$.05	DIED
SNEAD AL860010	New revenue to aid town's **Fire Department**	$.04	APPROVED 1/1/86
1985			
STATE			
AK S94	"Revenues are intended (but not earmarked) for **health education, including anti-smoking programs**"	$.08	APPROVED 5/17/85
AZ H2306	New revenue for **Highway Improvements** *	----	APPROVED 5/8/85

2022711426

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

FL S99	New revenue for **Municipal Revenue-Sharing Program** *	----	APPROVED 6/20/85
IL H568	New revenue to **Education Fund**	$.08	APPROVED 11/15/85
IL S730	Portion of increased revenue for **Common School Fund** *	----	APPROVED 8/1/85
MD S504	New revenue for **Agricultural Land Preservation (33%), Agricultural Development & Marketing (12%), and to the General Fund (55%)** *	----	APPROVED 5/22/85
MN H10	New revenue for **Sewer Construction, Anti-Smoking, and Maternal & Child Health Care Programs**	$.05	APPROVED 12/31/85
MS S2876	New revenue for **Teacher Salary** increases	$.06	APPROVED 3/19/85
OH H1219	All new revenue for **Education Improvements** *	----	APPROVED 6/21/85
OR H2183	New revenue for **Cities & Counties, with some for Elderly and Handicapped Transportation**	$.08	APPROVED 7/15/85
RI S742	New revenue for **Central Tumor Registry**	$.004	APPROVED 6/27/85
SD H 1365	New revenue for **Education Improvements**	$.08	APPROVED 3/2/85
LOCAL			
GENEVA COUNTY AL850002	New revenue for **County Volunteer Firefighter Departments**	$.05	APPROVED 5/2/85
DEKALB COUNTY AL850004	New Revenue for **County Employee Salaries**	$.07	APPROVED 8/12/85

* Sunset Provisions: effective dependent upon FET decrease

2022711427

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

CIGARETTE EXCISE TAXES; SOCIAL ENGINEERING (4/89)

STATUS

Unlike government officials who are interested in the revenue-raising capacity of the cigarette excise tax, public health professionals consider the principal attraction of the cigarette excise tax to be its smoking-deterrence function. The use of cigarette excise taxes for social engineering is largely unknown in this country. Historically, these taxes have been used to raise revenue.

The arguments for the use of cigarette excise taxes for social engineering are threefold:

1. Cigarette use is affected by price. Proponents of excise taxes believe that higher taxes will, therefore, reduce consumption.

2. Since social engineering works subtly through the price mechanism, the smoker is unaware of the effects. Both the federal and state excise taxes become part of the price paid by the smoker. A higher price forces the smoker to make a monetary decision based upon price information alone--a most effective form of social engineering. Warning labels, by contrast, provide product information and require a smoker to make an informed decision based upon his or her own risk perceptions. Since the decision is based upon individual choice not compulsion, labels are less effective in behavior modification.

3. Third, since smoking entails social costs, cigarette taxes are a type of user fee. According to the Department of Health and Human Services, the 1987 national health bill was $500.3 billion. Federal, state, and local spending amounted to 44% of the total. Direct health care costs of alleged smoking-related diseases are estimated to account for about 5% of total health costs. If the proceeds from the cigarette tax were earmarked for medical costs, then there would be a convergence of the revenue-raising desires of government and the smoking-deterrent efforts of the health professional. An increased cigarette excise tax would impose the health cost burden directly on consumers of a product held responsible for those medical costs and eventually would control health care costs by reducing cigarette consumption. By this same logic, excise taxes could be levied on many products (meat, eggs, milk, automobiles, games) to help pay the social costs associated with product use.

2022711428

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

The clearest example of the use of the cigarette excise tax for social engineering is the "tar" and nicotine tax. Such a tax is proportional and is graded by "tar" and nicotine content. A "tar" and nicotine tax, however, would only affect established smokers and would have a lesser deterrent affect on overall smoking participation.

State "Tar"/Nicotine Tax

	1980	1981	1982	1983	1984	1985	1986	1987	1988
Bills introduced:	3	1	1	1	1	0	0	0	0
Bills approved:	0	0	0	0	0	0	0	0	0
Percent:	0%	0%	0%	0%	0%	0%	0%	0%	0%

Source: The Tobacco Institute

ARGUMENTS AGAINST USING CIGARETTE EXCISE TAXES TO MODIFY BEHAVIOR

Using the cigarette excise tax for behavior modification is social engineering by an elitist group of health professionals and is a misuse of the system in general, and of cigarette taxes in particular:

1. **Cigarette Manufacturers Do Not Support The Sale Or Distribution Of Cigarettes To Minors.** Smoking is an adult custom and is treated as such in all manufacturers' advertising and sampling programs. Forty-five states have already enacted criminal penalties for the sale of cigarettes to minors.

2. **Raising Cigarette Taxes For Behavior Modification Is A "Blame-The-Victim" Policy.** Hiking cigarette taxes to intentionally make smoking financially burdensome is discriminatory, regressive and puritanical social engineering. In its own survey, the American Cancer Society observed that 87.5 percent of smokers find smoking pleasurable.

3. **Cigarette Excise Taxes Are Regressive.** A smoking household earning $10,000 per year pays four times the percentage of its income in cigarette taxes over the household earning $50,000. Since the poor spend a larger proportion of their income on cigarettes, a tax increase hits them harder than it hits the more affluent. When cigarette excise taxes are earmarked for public health care, a cruel joke is being played on the poor since they are footing the bill for services purportedly provided to them for free.[1]

1 "An Analysis of the Regressivity of Excise Taxes," Policy Economics Group, May 1987.

2022711429

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

4. **Cigarette Tax Revenues Already Far Exceed Even The Most Exaggerated Estimates Of The "Social Cost" Of Smoking.** Anti-smoking groups have taken the medical expenditures on smoking-related illnesses and estimated that the average adult smoker costs society approximately $100 in additional insurance premiums. If the cigarette excise tax is viewed as an offsetting payment to these social costs, then smokers are grossly overcharged. The average adult smoker pays out close to $340 in federal, state, and local taxes annually.

5. **Cigarette Excise Taxes Are The Domain Of The States.** In 1988, cigarette excise taxes provided the states with $4.9 billion in much needed revenue. State taxes generally exceed the federal tax and are increased more frequently. A federal smoking deterrent tax would reduce consumption and devastate state cigarette tax revenues which support education, housing, and other services.

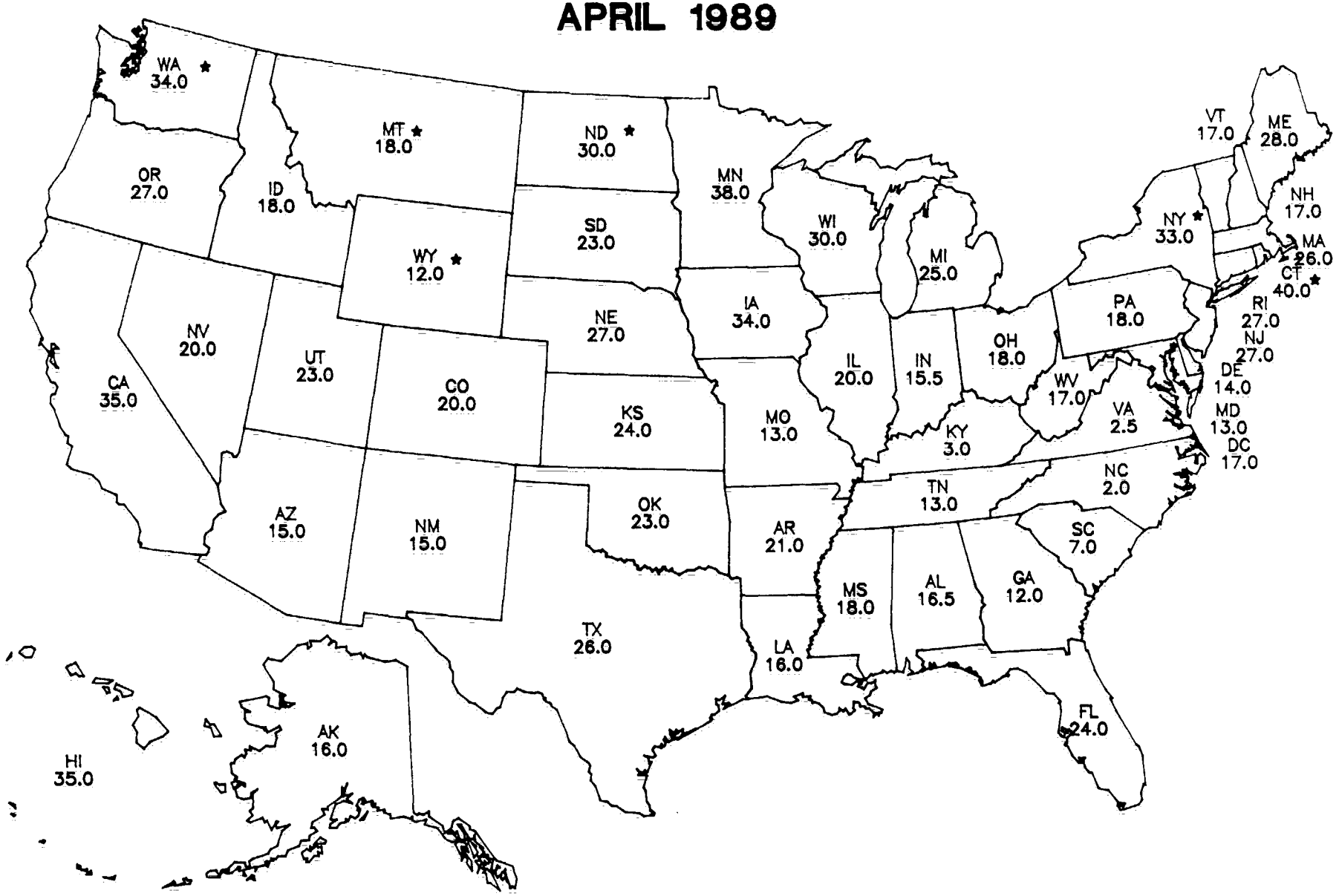
6. **The Use Of Excise Taxes To Control Behavior Violates A Consumer's Right To Choose.** Higher cigarette excise taxes increase the price of a pack of cigarettes out of the means of lower income consumers. This takes away their right to make a personally informed decision based upon individual choice. The philosophies of a selected group of individuals are, therefore, projected on society.

2022711430

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

STATE CIGARETTE EXCISE TAX RATES

APRIL 1989



20227114231

(RATES SHOWN IN CENTS PER PACK)

**Increase Enacted in 1989*

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

STATE CIGARETTE EXCISE TAX INCREASES SINCE 1983

	State	Tax Increase	Effective
1983			
	Arkansas	17.75 to 21 cents	3/83
	Colorado	10 to 15 cents	11/83
	Connecticut	21 to 26 cents	8/83
	Maine	16 to 20 cents	9/83
	Massachusetts	21 to 26 cents	7/83
	Montana	12 to 16 cents	7/83
	Nevada	10 to 15 cents	7/83
	New Hampshire	12 to 17 cents	8/83
	New Jersey	24 to 25 cents	7/83
	New York	15 to 21 cents	4/83
	North Dakota	12 to 18 cents	4/83
	Vermont	12 to 17 cents	8/83
1984			
	Alabama	16 to 16.5 cents	7/84
	Arizona	13 to 15 cents	7/84
	Louisiana	11 to 16 cents	7/84
	Texas	18.5 to 19.5 cents	10/84
1985			
	Alaska	8 to 16 cents	10/85
	Illinois	12 to 20 cents	12/85
	Iowa	18 to 26 cents	10/85
	Kansas	16 to 24 cents	10/85
	Maine	20 to 28 cents	10/85
	Minnesota	18 to 23 cents	7/85
	Mississippi	11 to 18 cents	6/85
	Oregon	19 to 27 cents	10/85
	Rhode Island	23 to 23.4 cents	7/85
	South Dakota	15 to 23 cents	7/85
	Texas	19.5 to 20.5 cents	9/85
1986			
	Colorado	15 to 20 cents	7/86
	Florida	21 to 24 cents	7/86
	Nebraska	18 to 23 cents	3/86
	New Mexico	12 to 15 cents	7/86
	Rhode Island	23.4 to 25 cents	7/86
	Washington	23 to 31 cents	4/86
1987			
	District of Columbia	13 to 17 cents	4/87
	Idaho	9.1 to 18 cents	4/87
	Indiana	10.5 to 15.5 cents	7/87
	Minnesota	23 to 38 cents	6/87
	Nebraska	23 to 27 cents	7/87
	Nevada	15 to 20 cents	7/87
	New Jersey	25 to 27 cents	7/87
	North Dakota	18 to 27 cents	7/87
	Ohio	14 to 18 cents	7/87
	Oklahoma	18 to 23 cents	6/87
	Texas	20.5 to 26 cents	7/87
	Utah	12 to 23 cents	4/87
	Wisconsin	25 to 30 cents	9/87

2022711432

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

1988		
Iowa	26 to 34 cents	3/88
Michigan	21 to 25 cents	1/88
Rhode Island	25 to 27 cents	7/88
California	10 to 35 cents	1/89
1989		
Connecticut	26 to 40 cents	4/89
Montana	16 to 18 cents	11/89
New York	21 to 33 cents	5/89
North Dakota	27 to 30 cents	7/89
Washington	31 to 34 cents	6/89
Wyoming	8 to 12 cents	7/89

2022711433

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

Source: http://www.industrydocuments.ucsf.edu/docs/xlvl0000

STATE	STATE EXCISE TAX AS OF 1/83	CURRENT STATE EXCISE TAX	PERCENT CHANGE IN THE TAX	DATE INCREASES WERE ENACTED
AL	.16	.165	3.1%	7/84
AK	.08	.16	100.0%	10/85
AZ	.13	.15	15.3%	7/84
AR	.1775	.21	18.3%	3/83
CA	.10	.35	250.0%	1/89
CO	.10	.20	100.0%	11/83, 7/86
CT	.21	.40	90.5%	8/83, 4/89
DE	.14	.14	0.0%	
DC	.13	.17	30.8%	4/87
FL	.21	.24	14.3%	7/86
GA	.12	.12	0.0%	
HI	.21	.30	38.1%	Annual Ad Valorem
ID	.091	.18	97.8%	4/87
IL	.12	.20	66.7%	12/85
IN	.105	.155	47.6%	7/87
IA	.18	.34	88.9%	10/85, 3/88
KS	.11	.24	118.0%	10/85
KY	.03	.03	0.0%	
LA	.11	.16	45.5%	7/84
ME	.16	.28	75.0%	9/83, 10/85
MD	.13	.13	0.0%	
MA	.21	.26	23.8%	7/83
MI	.21	.25	19.0%	1/88
MN	.18	.38	111.1%	7/85, 6/87
MS	.11	.18	63.6%	6/85
MO	.13	.13	0.0%	
MT	.12	.18	50.0%	7/83, 11/89
NE	.18	.27	50.0%	3/86, 7/87
NV	.10	.20	100.0%	7/83, 7/87
NH	.12	.17	41.7%	8/83
NJ	.24	.27	12.5%	7/83, 7/87
NM	.12	.15	25.0%	7/86
NY	.15	.33	120.0%	4/83, 5/89
NC	.02	.02	0.0%	
ND	.12	.30	150.0%	4/83, 7/87, 7/89
OH	.14	.18	28.6%	7/87
OK	.18	.23	27.8%	6/87
OR	.19	.27	42.1%	10/85
PA	.18	.18	0.0%	
RI	.23	.27	8.6%	7/85, 7/86, 7/88
SC	.07	.07	0.0%	
SD	.15	.23	53.3%	7/85
TN	.13	.13	0.0%	
TX	.185	.26	40.5%	10/84, 9/85, 10/87
UT	.12	.23	91.7%	4/87
VT	.12	.17	41.7%	8/83
VA	.025	.025	0.0%	
WA	.23	.34	47.8%	4/86, 6/89
WV	.17	.17	0.0%	
WI	.25	.30	20.0%	9/87
WY	.08	.12	50.0%	7/89

2022711434

BIBLIOGRAPHY OF BALANCED EXCISE TAX ARTICLES

Abrams, Burton A., "Equitable and Efficient Ways to Raise Taxes," Sunday News Journal, May 22, 1988.
-- Excise taxes should be fair to everyone, and not pinpoint certain groups.

Armentano, Dominick T., "Reagan's Successor Must Resist Temptation to Raise Taxes," New Haven Register, May 18, 1988.
-- Government is not helping anyone by raising taxes.

Clark, J.R., "Excise Tax: Bitter Medicine for Economy," Daily Record (NJ) May 22, 1988.
-- The taxed products only help subsidize the untaxed products.

Dalton, D. Allen, "Federal Tax Hike Destined in 1989," Idaho Press-Tribune, June 21, 1988.
-- "[Excise taxes] are discriminatory, inefficient and inequitable means for financing government."

David, John, "Taxes Will Target the Poor," The Charleston (SC) Gazette, June 6, 1988.
-- The deficit is the problem and excise taxes are not the solution.

Davis, Michael L., "Excise Taxes are Far From Painless Remedy," Dallas Times Herald, May 19, 1988.
-- Excise taxes eat away at the poor person's income, while hardly affecting the rich.

Federal Funds Information for States, "Grant Programs in the 1988 Congressional Budget Resolution, Impact on Southeastern States," July 1987.
-- An executive summary on the losses the southeastern states can expect due to the cut in federal grants and aid.

Goff, Brian L., "Excise Taxes are no Solution," Nashville Tennessean, June 3, 1987.
-- Arguments against government's random tax increases.

Gray, H. Peter and Walter, Ingo, "The Economic Contribution of the Tobacco Industry to the Aggregate Economy," Smoking and Society, Toward a More Balanced Assessment, Robert Tollison, ed., D.C. Heath and Company, Lexington, Massachusetts, 1986.
-- The tobacco industry as an important factor in national governments and their economies.

Hall, Ben, "It's About Time We Taxed the REAL Evils of Society," Madisonville (Kentucky) Messenger, Oct. 2, 1985.
-- Cigarette excise taxes are for the pious.

2022711435

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

(Excise taxes - cont.)

Howe, John S., "Less Spending, Not More Taxes, Is Only Real Budget Solution," The Topeka (Kansas) Capital-Journal, June 2, 1988.
-- The impact of discriminatory excise taxes hits the industry and its customers.

Kandel, Larry, "Broadcast Excerpt from 'Moneyline'," CNN/TV, NY, May 18, 1988.
-- Excise taxes bring in government revenue which would be lost by banning smoking.

Kohler-Hughes, Cindi, "Excise Tax on Tobacco Can be Bad News For America's Farmers," WIFEline, March 15, 1988.
-- Tobacco is indispensible for American farmers.

Lee, Dwight, "Tax Increase Won't Cut Budget Deficit," The Atlanta Journal, April 24, 1988.
-- The raising of taxes does not guarantee a solution to budget deficit problems.

Maurice, S. Charles, "Economic Panel Lets Officials Dodge the Deficit Bullet," The Houston Post, May 19, 1988.
-- Taxes guaranteed to balance the budget will only affect the poor negatively.

McIntyre, Robert S., Meeting the Revenue Targets in the 1988 Budget: Will Tax Reform Be Extended or Undermined?, Washington, D.C., May 1987.
-- Regressive taxation.

Mitchell, William, "Tax Increases Not Solution to Reducing Deficit," The Register-Guard (OR), June 20, 1988.
-- Excise taxes have proved to be inequitable and regressive.

Policy Economics Group of Peat Marwick Main & Co., Effect of Federal Excise Tax Rate Increases on State Excise Tax Revenues, June 1987.
-- State revenue losses from a federal excise tax increase.

Policy Economics Group of Peat Marwick Main & Co., An Analysis of the Regressivity of Excise Taxes, May, 1987.
-- "All the excise taxes (gasoline, alcohol, and tobacco) examined in this report were found to be regressive."

Rising, Hawley, "Pay For Your Sins," The Boston Globe, June 15, 1988.
-- If we're going to tax cigarettes, let's tax all vices and sins.

Roldan, Romualdo A., "The Importance of Tobacco to the United States' Foreign Trade," Wharton Econometrics, June 30, 1987.
-- Tobacco taxes reducing deficit in foreign trade accounts.

Sandler, Todd, "The Shape of Taxes to Come", The Cedar Rapids (IA) Gazette, May 15, 1988.
-- If federal spending could be curbed, all these excise taxes would not be necessary.

2022711436

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

(Excise taxes - cont.)

Savarese, James M. and Shughart, William F. II, "The Incidence of Taxes on Tobacco," Smoking and Society, Toward a More Balanced Assessment, Robert Tollison, ed., D.C. Heath and Company, Lexington, Massachusetts, 1986.
-- Excise taxes are regressive when one figures incomes of smokers.

Tuerck, David G., "A Sinful Proposal," The Boston Globe, June 13, 1988.
-- Deficit should be taken care of by higher taxes across the board, rather than by discriminating against people and their tastes.

Ture, Norman B., "Don't Index Excises," Institute for Research on the Economics of Taxation, No. 39, Washington, D.C., July 20, 1987.
-- Raising excise taxes should be done in a fair manner.

Wyrick, Thomas L., "Higher Taxes Can't Solve Budget Crisis," The News-Leader, June 26, 1988.
-- Higher taxes just give the government more money to mess around with.

2022711437

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

ADVERTISING

2022711438

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

YOUTH SMOKING (4/89)

1. **Cigarette Marketing Efforts Are Not Targeted At Minors.**

It has always been the policy of cigarette manufacturers that smoking or not smoking is a choice to be made by informed adults. Consistent with that belief, the industry has taken the following steps:

- o 1963: announced the termination of brand advertising and promotion in college publications and on campuses.

- o 1964: adopted a code prohibiting advertising and promotion directed at young people, forbidding the use of noted sports figures and other celebrities in advertisements, requiring that models appearing in advertisements must be, and must appear to be, at least 25 years old, and assuring that advertisements do not present smoking as a pastime that leads to success, sexual attractiveness, or prominence.

- o 1969: volunteered to end brand advertisements on television and radio, aware of the concerns of some groups about substantial and unavoidable audiences of young people. Congress prohibited the broadcast of cigarette commercials in 1971.

- o 1981: adopted a new code of sampling practices that prohibits distribution within two blocks of youth activity centers. This code reinforced the industry's own ban on distribution of samples to young people. Samplers are forbidden by contract to violate these restrictions.

- o 1984: issued two guidebooks in conjunction with the National Association of State Boards of Education (NASBE): "Helping Youth Decide" and "Helping Youth Say No." Both provide guidance on family communication to enable parents to help their children develop decision-making skills needed to deal wisely with everyday choices and life-style decisions.

- o 1986: provided NASBE with grants for funding Community Alliance Programs to provide the impetus for broad community-based efforts to improve parent-youth interaction.

2. **Advertising And Market Promotions Do Not Induce Youth To Smoke.**

In his latest report on smoking, the Surgeon General concluded: "There is no scientifically rigorous study available to the public that provides a definitive answer to the basic question of whether advertising and promotion increased the level of tobacco consumption." (Reducing the Health Consequences of Smoking: 25 Years of Progress. Report of the Surgeon General, 1/11/89, p.512.)

2022711439

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

Numerous other studies cite several factors which are more important than advertising and marketing in determining smoking initiation.

- Why Juveniles Start Smoking (1986)- A five-country study by the International Advertising Association concluded that "advertising plays a minuscule role in the initiation of smoking by the young." Parents, siblings, and friends appear to be the determining factors when children start to smoke.

- Children and Advertising (1987) - This report, prepared for the Advertising Association, is based on a survey of children's awareness of advertising on posters, in the press, and via sponsorship. It states, "There seems to be little support here for a view that initiation into smoking is triggered by advertising, or indirectly through projecting an attractive self image." In this survey, 95 percent of 10 to 14-year-olds who had tried smoking cited peer influence and curiosity as reasons for first trying a cigarette, whereas only 1 percent cited advertising.

- Jean J. Boddewyn, Ph.D., Professor of Marketing and International Business at City University of New York, in a statement made before the legislative committee of the Canadian House of Commons, January 20, 1988, rebutted the argument that banning advertising reduces consumption among young Canadians. "The World Health Organization has found no systematic difference between juvenile smoking habits in countries such as Norway and Finland, where tobacco advertising is completely banned, and in countries such as Austria and England, where it is not. Indeed, WHO and other researchers report that the incidence of smoking among young people is higher in many places where advertising is banned than where it is permitted. It would be a grave mistake to enact an advertising ban on the basis of a premise that itself is mistaken."

- Factors Associated With The Initiation of "Smoking" In Nine-Year-Old Children (1986). This study examines the influence of several factors on nine-year-old children during the formative stages of initiation into the use of tobacco. The authors limited the examination to the factors they considered most important, including peer influence, family attitudes and habits, home environment, socioeconomic background, and school performance. Advertising was not identified as an important factor.

2022711440

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

3. **Cigarette Manufacturers Do Not Replace Former Smokers With Teenage Smokers To Maintain Current Levels Of Consumption. (See attached chart and graph.)**

   - The fact remains that smoking in the United States, measured in terms of per capita consumption, has been declining at an annual rate of about 2 percent for several years. There is no "expanding pie," just competition among manufacturers for a larger slice of a shrinking pie. As Ronald Morrow, a managing director of Smith Barney Harris Upham & Co., said, "Market share is the name of the game." (Business Journal, 2/13/89)

   - The incidence of smoking among high school seniors has remained at about 19 percent since 1984, down from a high of about 29 percent in 1976.

   - Tobacco advertising expenditures, both in current dollar figures and as a percentage of total advertising spending, have been declining for several years, after having risen steadily throughout the 1970's.

4. **Vending Machines Are Not A Significant Source Of Cigarettes For Minors.**

   - **Vending Machines and Cigarette Purchases By Minors (National Automatic Merchandising Association, 1986).** The vending companies' Code of Self-Regulation is designed to make sure cigarette vending machines are not a source of cigarettes for minors. The survey points out that:

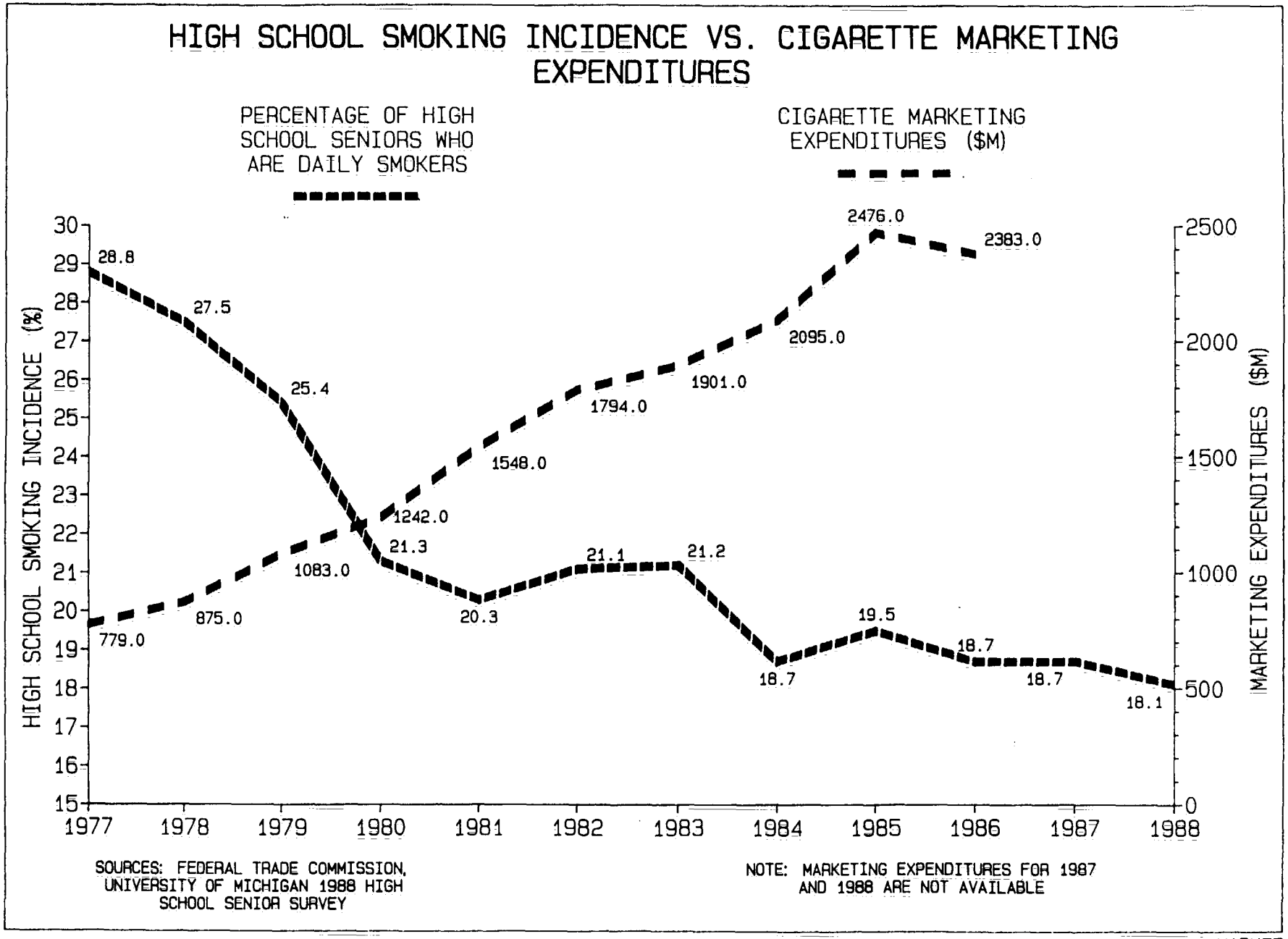
     - approximately 7% [1986] of industry sales are through vending machines (now only 4%);

     - 97% of all teenagers never purchase cigarettes from a vending machine;

     - 80% of cigarette vending machines are located where teenagers are not allowed or rarely frequent.

2022711441

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000



MARKET

2022711442

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

ADVERTISING EXPENDITURES AND CIGARETTE USE
1984-1987

Tobacco Advertising

	1984	1985	1986	1987
Tobacco Ad Spending ($000)	872,370	887,330	728,763	620,900
Total Ad Spending ($000)	25,171,918	27,363,087	28,824,600	30,174,800
Tobacco Ad Spending as a percent of Total Ad Spending	3.5%	3.2%	2.5%	2.1%

Cigarette Consumption

	1984	1985	1986	1987
Annual Per Capita Cigarette Consumption	3,446	3,370	3,274	3,196
Percent of high school seniors that have smoked one or more cigarettes daily in past 30 days	18.7%	19.5%	18.7%	18.7%

Sources:
Advertising Age; University of Michigan High School Senior Survey.

2022711443

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

ADVERTISING AND PROMOTION (4/89)

STATUS

Congress passed legislation banning the broadcast of cigarette advertising in 1971. Since 1984, state and local legislation on advertising and promotion has been preempted by the Federal Comprehensive Smoking Education Act, which amends portions of the Public Health Cigarette Smoking Act of 1969. The amendments reflect the fact that chaos and confusion would result if each state were free to enact its own special legislation on these issues.

In 1985, the American Medical Association took the lead in a campaign to ban all cigarette advertising. Federal legislation to achieve this end was introduced in the 100th Congress, and will likely be introduced this session. Other variations on the theme, such as "tombstone" advertising, counter-advertising, or limits on the deductibility of advertising expenses can be expected. Although commercial speech had enjoyed steadily broader First Amendment protection, the current Supreme Court is more deferential to legislative enactments.

SUMMARY ARGUMENTS

1. **Cigarettes Are Not The Most Heavily Advertised Product In This Country.**

   - o They are not advertised on television or radio, the most pervasive advertising media. Automobiles are advertised twice as much in magazines and 10 times as much in newspapers as tobacco.

   - o Out of every dollar spent on advertising in the U.S., approximately 2 cents went to promote tobacco.

   - o For every dollar in revenues a newspaper or magazine receives from advertisers, less than 5 cents comes from tobacco ads.

   - o Newspapers and magazines receive twenty-one times as much revenue from non-tobacco ads as from tobacco ads.

   - o Outdoor advertising is an insignificant part of tobacco advertising. It constituted less than 2.2 percent of all advertising expenditures in 1987. (Ad Age, September 28, 1988.)

2022711444

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

2. **Advertising Does Not Induce Nonsmokers To Start Smoking.**

- The President's Council Of Economic Advisers reported in 1987 that "studies of why people start smoking identify the influences of parents, siblings and friends as the most important factors ... There is little evidence that advertising results in additional smoking."

- Dr. Mortimer B. Lipsett, Director, National Institute of Child Health and Human Development, March 9, 1983, in testimony for the House Subcommittee on Health and the Environment stated "The most forceful determinants of smoking are parents, peers and older siblings."

- The U.S. Surgeon General's 1979 Report to Congress stated, "As the cigarette industry has asserted, the major action of cigarette advertising now seems to shift brand preference and to alter market shares for a particular brand."

- Of the 4.7 trillion cigarettes produced in the world during 1985, 1.9 trillion or 40% were produced and consumed in countries where there is a complete and effective ban on all forms of tobacco advertising. Perhaps half of the 800 million people on earth who smoke have never seen a cigarette advertisement. (Tobacco Reporter, September 1986, p. 40--original data source: U.S.D.A., Foreign Agricultural Service.)

3. **Advertising Bans Do Not Reduce Cigarette Consumption.**

- In January 1988, Surgeon General C. Everett Koop conceded it may be impossible to prove advertising increases tobacco consumption: "There is no scientifically rigorous study available to the public that provides a definite answer to the basic question of whether advertising and promotion increased the level of tobacco consumption." (Reducing the Health Consequences of Smoking: 25 Years of Progress, p.512.)

- Chinese cigarette production/consumption has more than doubled in the last decade and continues to increase at 11% annually, while all commercial advertising is banned in China. Soviet cigarette consumption/production grows at about 2 percent annually despite the total prohibition of commercial advertising. The same growth is evidenced in Poland, Hungary, Rumania, Czechoslovakia, Bulgaria, Yugoslavia, and East Germany, which also ban advertising. In Thailand, Iceland, Singapore, and Italy, per capita cigarette consumption has continued to grow in spite of the ad bans in effect.

2022711445

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

- Cigarette advertising in Norway was banned in 1975. Per capita consumption rose overall from 1975 through 1980, declined from 1981 through 1983, and rose in 1984. The pattern is very similar to the U.S. consumption pattern except U.S. consumption has been declining since 1983. Smoking incidence in Norway fell from 46 percent in 1975 to 42 percent in 1984. During the same period, U.S. smoking incidence fell from 37 percent to 32 percent (U.S. Dept. of HHS, Health; United States, 1984; p. 86). Despite the Norway advertising ban, and the lack of any similar U.S. ban, smoking incidence dropped more rapidly in the U.S. than in Norway over this period. (USDA, 1986; J.J. Boddewyn, Tobacco Advertising Bans and Consumption in 16 Countries.)

4. **Cigarette Ads Fully Inform The Smoker Of The Purported Health Risks Of Smoking.**

   - On every ad, on every pack, one of the Surgeon General's four warnings appear. Gallup polls indicate that well over 90 percent of the population is aware of the health controversy regarding cigarettes. (Gallup Poll, June 29, 1981.)

   - The warning labels on cigarettes alone appear some 30 billion times each year--that's nearly 500 warnings per smoker per year. Every time anyone sees a cigarette ad, that person also sees the Surgeon General's warning on smoking and health and "tar"/nicotine content. How much fuller could disclosure be?

5. **Advertising Censorship Restricts Competition and Inflicts Economic Damage.**

   - A study by the Dutch Advertising Association (August 1979) maintains, "Without advertising, the producer cannot address the consumer, and he will think twice before investing in any product innovation."

   - Advertising forces companies to make competitive offers which the consumer can verify. Therefore, "..it acts both on lowering prices and increasing quality. It is highly probable that a ban on advertising would strengthen oligopolic tendencies in markets with a few large suppliers..." (Dutch Advertising Association, August 1979.)

2022711446

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

6. **Cigarette Advertisements Seek To Maintain Brand Share.**

- Ten percent of smokers switch brands each year. That 10 percent of the $38 billion retail cigarette market is highly significant. A cigarette brand that garnered a mere 1 percent would be considered extremely successful. No brand introduced in the last 30 years has gained more than a 5 percent share. The 10 percent of smokers who switch are a critical element in the industry's marketing strategy. Advertising attracts the switchers to new brands and/or maintains their loyalty to current brands.

7. **Banning Advertising Of A Legal Product May Be Unconstitutional.**

- In this area of "commercial speech," the Supreme Court has recognized a four-part test to determine if the restriction of commercial speech is constitutional (Central Hudson, 1980).

  - ads must concern lawful activity;
  - the government interest must be substantial;
  - the restriction must directly advance said interest; and
  - the regulation is no more restrictive than necessary to achieve that interest.

  The ability to satisfy at least the last two criteria presents the censors with the biggest constitutional hurdle.

8. **A Tobacco Ad Ban Sets A Dangerous Precedent.**

- Legislation enacted to exert behavioral control through the control of free speech is the most dangerous kind of government intrusion. It is beyond the purview of government to decide what is "information" and what is not. Giving the government control over deciding what information is commercially valuable risks reducing all available information in the society (and marketplace) to the lowest common denominator. "If the marketplace of ideas is to remain free and open, governments must not be allowed to choose which ideas are worth discussing and debating." (Supreme Court: Consolidated Edison Company v. NY Public Service Commission.)

2022711447

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

ADVERTISING AND PRODUCT IMPROVEMENT (4/89)

Advertising and marketing techniques such as sampling, couponing, and promotional sponsorship are indispensable tools to convey product information to the consumer. Without the use of these tools, product innovation and improvement designed to address consumer demands become severely inhibited. Throughout the last three decades, tobacco companies have undertaken efforts to improve their products in response to consumer demand:

1. Improved filters to reduce the amount of "tar" inhaled by a smoker. In 1955, an average cigarette delivered 37 milligrams of "tar" compared to 12 milligrams of "tar" today. Indeed, there are ultra-low "tar" brands that deliver as little as one or two milligrams of "tar" per cigarette, a 95 percent reduction from the 1955 level.

2. Developed filters to eliminate or reduce to the most minute quantities certain allegedly harmful substances.

3. Designed methods for diluting cigarette smoke with fresh air in order to reduce "tar" delivery still further. First used in the late 1950s, this process has developed from mere pinpricks in filter material to the present technology in which lasers make microscopic holes throughout the entire cigarette paper to allow more complete dilution.

4. Tobacco industry scientists are participating in the Federal Technical Study Group on Cigarette and Little Cigar Fire Safety to determine the technical and commercial feasibility of developing cigarettes and little cigars that would be less likely to ignite upholstered furniture and mattresses.

None of these improvements could have occurred, and future product improvements will be inhibited, if manufacturers cannot convey information to their customers through advertising and marketing promotions.

In fact, John E. Calfee, former assistant to the director of the Bureau of Economics at the FTC, concluded, "The fact remains that successive restrictions on advertising have tended to undermine improvements in cigarettes while doing nothing to reduce smoking." (Regulation, November/December, 1986).

2022711448

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

SAMPLING BANS (4/89)

STATUS

Minnesota and Louisiana are the only states that have banned cigarette sampling to adults. Utah banned sampling except to adults at conventions and in retail stores after a tobacco purchase. The following localities have instituted such bans:

City	Year Enacted
Minneapolis-St. Paul, MN	1979
Albert Lea, MN	1980
Cambridge, MA	1982
Newton, MA	1982
Somerville, MA	1983
Fort Lauderdale, FL	1984 (Beach only)
Boston, MA	1984
Worcester, MA	1984
Tallahassee, FL	1984
Atlanta, GA	1986
Bowie, MD	1986
Amherst, MA	1987
Lake City, FL	1988
Austin, TX	1988
San Francisco, CA	1988
Cincinnati, OH	1988

SUMMARY ARGUMENTS

1. Any ban on the distribution of a legal product to adult consumers is a violation of the constitutional guarantee of free commercial speech.

2. Manufacturers use sampling to switch smokers from one brand to another, not to entice nonsmokers to begin to smoke.

3. The tobacco industry's own sampling code strictly forbids any distribution to persons under the age of 21. No one has ever produced any credible evidence that a minor or nonsmoker was induced to start smoking because of a sample pack of cigarettes--however it was obtained.

4. Localities that ban sampling eliminate jobs for those whose business it is to distribute samples. Tax revenues derived from sample cigarettes are also reduced by sampling bans: although samples are given free to smokers, the manufacturers pay all applicable federal, state, and local taxes on the samples.

2022711449

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

5. Sampling bans reduce consumer choice and inhibit the introduction of new products. They are thus anti-competitive.

6. In countries where sampling and other cigarette marketing efforts are prohibited, cigarette consumption has not declined nor has smoking incidence among minors. What has happened is a slowing of the trend toward lower "tar" and nicotine cigarettes.

2022711450

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

ADVERTISING DEDUCTIBILITY (4/89)

STATUS

Anti-tobacco legislators have proposed reducing or eliminating the tax deduction for tobacco product advertising, which is currently 100% of advertising expenditures. They believe this is a way to curtail the advertising of tobacco products without an outright ban, thereby skirting constitutional concerns. It is argued that removing the deductibility of advertising expenses will have an effect on the overall consumption of cigarettes and other tobacco products.

FEDERAL LEGISLATION

Legislators have introduced four bills at the federal level:

- On February 3, 1987, Senator Bill Bradley introduced a bill (S446) that would disallow tax deductions "for any amount incurred to advertise any tobacco products." The bill died in committee.

- Representative Brian Donnelly (MA-11) introduced a bill (HR 2606), on June 4, 1987, that would prohibit deductibility for any communications "informing or influencing the general public with respect to tobacco and tobacco products."

- On March 21, 1989, Rep. F. H. Stark (CA-9) introduced a similar bill (HR 1544) that would prohibit deductibility for any communications "informing or influencing the general public with respect to tobacco and tobacco products."

- The "Smoking and Health Advertising Act of 1989" (HR 412) was introduced by Representative Theodore Weiss (NY-17). This bill would disallow the deduction for advertising or other promotional expenses with respect to sales of tobacco products unless the taxpayer (i.e., the tobacco industry) pays for a certain amount of advertising on the health effects of smoking. The bill is pending in committee.

STATE LEGISLATION

Only Iowa and Minnesota have considered legislation relating to advertising deductibility:

- Iowa considered a bill (SB 2091), introduced by Senator Taylor on January 30, 1986, which would not allow companies to deduct the cost of advertising from state corporate income tax. The bill was reintroduced in 1989.

- In 1987, Minnesota considered a bill (HR 1282 and S 963) which would change the current law by disallowing a sales tax exemption on magazine subscriptions that carry tobacco advertising. The bill died in committee.

2022711451

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

SUMMARY ARGUMENTS

1. **Tobacco Is A Legal Product.**
Proposals to suppress the "paid speech" of tobacco companies are discriminatory and illegal. Tobacco product advertising is a lawful activity. It is conducted in accordance with relevant federal regulations and is entitled to the protection all commercial speech enjoys.

2. **Advertising Does Not Induce The Public To Smoke.**
Advertising of "mature" products promotes one brand of a product already used by a consumer over another brand. The President's Council of Economic Advisers stated, "There is little evidence that advertising results in additional smoking." The International Advertising Association recently conducted a five-country study that showed smoking among young people is higher in many places where advertising is banned or restricted than where it is not.[1]

3. **Taxpayers Do Not Subsidize Cigarette Advertising.**
It is perverse logic to assume government is somehow entitled to all individual and corporate income except that portion it allows taxpayers to retain. To argue that the people of the country subsidize any product or group through tax deductions assumes that the government is the rightful owner of the society's wealth. It is the taxpayer who provides the government with revenue, not the government which allows the taxpayer to retain a portion of income to which he would otherwise be entitled. To assume otherwise is to assert that all the income in the U.S. is really the government's, not the taxpayers' who earned it.

4. **Most Advertising Expenses Are A Part Of Sales.**
Most advertising is designed to generate current sales and revenue, which are subject to taxation as ordinary income. Therefore, advertising expenses should be deductible as part of the cost of sales.

5. **Small Business Would Be Hurt Most And Big Business Helped.**
Limiting the advertising deductibility on any product, including cigarettes, would have a more significant negative impact on smaller than on larger businesses. Small firms need advertising to promote new brands over established ones. A limitation on advertising deductibility will make it more difficult for new small businesses to obtain a sufficient market share.

2022711452

---

[1] "A Constitutional Analysis of Proposals to Disallow Tax Deductions for Tobacco Product Advertising Expenses," Covington & Burling, 1987.

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

6. **Consumers Have A Right To Information.**
Eliminating the deductibility of advertising will reduce advertising expenditures. The government is effectively influencing consumer choice by restricting the flow of truthful information about a lawful product. Using the tax system to control free speech and consumer behavior sets an ominous precedent. Almost all products have some group who claims the product is bad and should be suppressed.

7. **Economic Impact Is Substantial.**
The net economic impact of eliminating the tax deduction for all advertising was estimated in 1986 by Wharton Econometrics [2] to be:

- an initial job loss of 222,000, amounting to more than 600,000;
- a cumulative loss in output of $92 billion in 1985 dollars;
- a cumulative loss in real disposable income per household of $626 in 1985 dollars.

2022711453

---

[2] "The Macroeconomic Costs of Limiting the Deductibility of Advertising Expenses," Wharton Econometric Forecasting Associates, 1986.

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

BIBLIOGRAPHY OF BALANCED ADVERTISING ARTICLES

Boddewyn, J.J., "Smoking Ads Don't Get People Hooked," The Wall Street Journal, November 21, 1986.
-- questions the role ascribed to advertising and the efficacy imputed to an advertising ban.

Boddewyn, J.J., Tobacco Advertising Bans and Consumption in 16 Countries, International Advertising Association, New York, NY, 1986.
-- Advertising bans have not been followed by decreases in overall tobacco consumption.

Boddewyn, J.J., "Tobacco Advertising in a Free Society," Smoking and Society, Toward a More Balanced Assessment, Robert Tollison, ed., D.C. Heath and Company, Lexington, Massachusetts, 1986.
-- Disadvantages of limited advertising and goverment-controlled advertising.

Boddewyn, Jean J., "Statement and Evidentiary Submission before the Legislative Committee of the House of Commons Considering Bill C-51 on Behalf of the Canadian Tobacco Manufacturers Council," January 20, 1988.
-- Cigarette advertising in Canada; its effects on teenagers as opposed to other elements affecting decisions to smoke.

Brown, Franklin, "Problem is Poverty, Not Cigarette Ads," The Record, June 22, 1986.
-- Advertising is not killing people. There are far greater problems than this.

Burton, Jack, "Norway Up in Smoke: Cigaret Ad Ban Termed Ineffective," Advertising Age, April 14, 1987.
-- Advertising ban appears to have had litte effect on tobacco consumption in Norway.

Calfee, John E., "The Ghost of Cigarette Advertising Past," Regulation, November/December 1986.
-- Past restrictions on cigarette advertising have never done much to restrain cigarette manufacturers, or to improve their products, so why continue trying to ban it?

"Censors at Work," Richmond (VA) Times Dispatch, editorial, March 13, 1987.
-- Congress has no right to dictate advertising policies to the nation's media.

Cohen, Lloyd R., "A Question of Liberty: Let's Not Ban Cigarette Ads," Chicago Tribune, December 23, 1988.
-- A ban on cigarette advertising would be an assault on the liberty of thought and speech.

2022711451

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

(Advertising - cont.)

Cohen, Lloyd, "Ban Cigarette Advertising? A Question of Liberty," The San Diego Union, July 13, 1987.
-- Ban on advertising is inconsistent with fundamental commitments to personal autonomy and individual dignity that are the cornerstones of our political and economic system.

Covington & Burling, "A Constitutional Analysis of Proposals to Ban or Restrict Tobacco Product Advertising", Washington, D.C., July 18, 1986.
-- re: Legislation discriminating against tobacco product advertising and all products.

Cox, Barry A., "Tobacco Ads: Would a Ban Really Work?" The Washington Post, May 28, 1987.
-- Loss of corporate sponsorship as a result of advertising bans is not the best way to stop people from smoking.

Den Uyl, Douglas J., and Machan, Tibor R., "Should Cigarette Advertising Be Banned?" The Freeman, December, 1987.
-- re: Basic moral and political values concerning the banning of cigarette advertising.

Dershowitz, Alan, "Censors Worse than Cigarettes," The Boston Herald, March 2, 1987.
-- Government censorship is more dangerous than cigarettes.

Dow, Steven, "Ban on Tobacco Ads is Wrong Approach," Lansing, Michigan, State Journal, April 24, 1987.
-- Proposed ban on cigarette advertising has serious implications with respect to all products that entail apparent health risks.

Ekelund, Robert B., Jr., "Ban on Tobacco Advertising Will Not Have Desired Effect," The Montgomery (AL) Advertiser, June 25, 1987.
-- "Advertising by tobacco companies does not cause any significant problems."

"Free Speech is Under Assault," Mobil Advertisement, December, 1988.
-- If any group or opinion is excluded from the freedom of speech, the right to be heard is weakened for all of us.

Infotab, Children and Advertising, Report on a Survey, Main Report, Volume I, Prepared for The Advertising Association, 1987.
-- Advertising does not affect initial attempt at smoking for children.

Jaffe, Daniel L., "Strategies of Censorship: Congressional Efforts to Suppress Commercial Speech -- the Advertiser Viewpoint," Commercial Speech in the Wake of Posadas: The New Confrontation Between Advertising and the First Amendment, American Bar Association, 1987.
-- Congress and its attempts at censorship and the impact on the advertisers.

2022711455

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

(Advertising - cont.)

Kmiec, Douglas W., "The Wrong Solution," American Bar Association Journal, December 1, 1986.
-- "We should not be inclined to permit such a drastic restriction of our First Amendment freedoms."

Lyden, Donald P., "Banning Tobacco Advertising Will Not Make Us Healthier," Los Angeles Herald Examiner, April 17, 1987.
-- Until the day that tobacco products are declared illegal, we must protect the rights of all citizens - including those of tobacco products - to express themselves.

Mintz, Morton, "Arts Program Publisher Hits Measures to Ban Tobacco Ads," The Washington Post, August 12, 1987.
-- Advertising bans decrease incentives for corporate sponsorship of the arts.

Nelkin, Dorothy, "The Culture of Science Journalism," Selling Science: How the Press Covers Science and Technology, W.H. Freeman, New York.
-- Controversy over media coverage of cancer and smoking.

Neuborne, Burt, Free Speech - Free Markets - Free Choice; an essay on commercial speech, Association of National Advertisers, Inc., 1987.
-- Advertising bans not a hindrance to the tobacco companies.

Neuborne, Burt, "Free Speech and Consumer Choice," PM Editorial Services, 1988.
-- Lack of free advertising limits flow of information to the public.

Neuborne, Burt, "Testimony Before the Subcommittee on Transportation, Tourism and Hazardous Materials of the House Committee on Energy and Commerce, April 3, 1987," Commercial Speech in the Wake of Posadas: The New Confrontation Between Advertising and the First Amendment, American Bar Association, 1987.
-- Relationship between free speech, consumer sovereignty, and political democracy.

Spielberger, Charles D., "Psychological Detriments of Smoking Behavior," Smoking and Society, Toward a More Balanced Assessment, Robert Tollison, ed., D.C. Heath and Company, Lexington, Massachusetts, 1986.
-- Relationships and social factors have a greater effect than advertising on people's smoking.

Sucherman, Stuart F., "What IS Commercial Speech and Why You Should Care," Commercial Speech in the Wake of Posadas: The New Confrontation Between Advertising and the First Amendment, American Bar Association, 1987.
-- Corporate America's free speech rights: public policy issues and commercial speech.

2022711456

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

(Advertising - cont.)

Versfelt, David S., "The View of the Advertising Industry: Truthful Advertising for Lawful Products Deserves Full Protection Under the First Amendment," Commercial Speech in the Wake of Posadas: The New Confrontation Between Advertising and the First Amendment, American Bar Association, 1987.
-- Unconstitutionality of banning ads which are truthful and non-deceptive.

Ward, Scott, Ph.D., "Statement," Commercial Speech in the Wake of Posadas: The New Confrontation Between Advertising and the First Amendment, American Bar Association, 1987.
-- Distinction between "new" and "mature" product markets, their advertising objectives, and consumer responses to advertising.

Wattenberg, Ben J., The Good News is the Bad News is Wrong, Simon and Schuster, NY, 1984.
-- Media and the misconstruing of information which they feed to the public.

Whitman, Douglas, "Advertising Isn't to Blame for Smoking," The Kansas City Star, April 7, 1987.
-- People would not stop smoking even if cigarette advertising were banned.

2022711457

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

2022711458

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

SOLID WASTE/PACKAGING LEGISLATION (4/89)

STATUS

State and local governments are attempting to solve the ever-growing problem of dwindling landfill capacity. From the 1970's to 1980, nearly a dozen states passed litter control, recycling, and solid waste disposal programs funded through a variety of taxes. These taxes were assessed on manufacturers, wholesalers, or retailers of products deemed to contribute to the litter problem. Most of these laws have been repealed or replaced with "bottle bills" requiring refundable deposits on containers.

In 1987, two new approaches to litter control were devised: Solid waste management and the prohibition of certain chemicals in packaging materials. Legislation limiting the use of certain materials in containers and packaging was introduced in 1987. Bills to tax containers and packaging materials, including cigarette packaging, were introduced in eight states during 1988. Most, however, were given little attention or were amended to limit the scope of affected products. Florida enacted a comprehensive solid waste law that includes a package tax to be imposed in 1992 if certain recycling goals are not met. Measures limiting the use of certain materials in containers and wrappings have been proposed in four states but were not considered seriously in 1988.

Nineteen states have enacted some form of solid waste management legislation: Arizona, California, Connecticut, Hawaii, Illinois, Louisiana, Maryland, Maine, Michigan, Minnesota, New Hampshire, Oklahoma, New Jersey, Ohio, Rhode Island, Tennessee, Virginia, Washington, and Wisconsin.

On the local level, an ordinance in Suffolk County, New York, in 1988, banned the use of nonbiodegradable plastic bags. A similar ordinance was passed in Nassau County, New York. In addition, Portland, Oregon, Berkeley, California, and Washington, D.C. have passed legislation dealing with the solid waste issue.

At the federal level in 1988, the Senate Environmental Protection Subcommittee of the Committee on Environment and Public Works held hearings on the "Waste Minimization and Control Act of 1988." The measure would have imposed a fee on virgin materials used for packaging of $7 per ton on packaging materials or .07 cents per rigid container. Several bills were also introduced in the U.S. House of Representatives addressing various elements of the solid waste issue. All of these bills died with adjournment.

2022711459

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

SUMMARY ARGUMENTS

1. Restrictions on packaging materials could ban the use of certain materials in packaging tobacco products with no feasible alternative materials available as substitutes, and with little or no environmental benefit. Such restrictions will serve only to disrupt and lessen the effectiveness and superiority of the current system. In fact, packaging practices developed in the last decade have substantially reduced the amount of materials entering the waste stream.

2. Packaging taxes would increase the cost of packaging products and result in price increases in tobacco products. Taxing packaging materials as a means to fund solid waste programs and raise state revenues is unfair because it unfairly targets specific products and industries. Furthermore, packaging taxes and product bans will not solve or even address the solid waste disposal problem.

3. Biodegradable materials may actually undermine recycling efforts since their life spans are shorter. Sanitary landfill studies have shown that the biodegradability of certain products is not a favorable characteristic because (1) the anaerobic conditions of existing landfills impede the degrading process of degradable products, and (2) many biodegradable products produce dangerous explosive gases and contaminated runoff when they eventually decompose in landfills. Furthermore, leachate from biodegradable materials can contaminate water tables.

4. A report on New York by the Public Policy Institute, "Dealing with Solid Waste," concludes that it is "far from certain that market intervention will provide overall benefits in terms of waste disposal" and "New York can effectively manage its solid wastes without substantial changes in business and consumer behavior."[1] It recommended more in-depth research to determine the long-term social economic costs of solid waste.

5. The Resource Conservation Committee concluded that a national waste generation fee "would have a low project impact on material uses, recycling and disposal; would present complex administrative problems; and it would be difficult to design a system of charges and exclusions that achieved the theoretical goal of tax equity."[1]

2022711460

---

[1] "Dealing With Solid Waste", The Public Policy Institute, 1988.

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

PROPOSITION 65 -- TOXIC ENFORCEMENT ACT (4/89)

STATUS

The recent passage of California's Proposition 65, The Safe Drinking Water and Toxic Enforcement Act, has introduced an unprecedented form of state regulation of consumer products. The Act contains two basic provisions: (1) a prohibition against discharging listed chemicals into sources of drinking water, and (2) a requirement that businesses provide 'clear and reasonable' warning whenever they expose a person to a listed chemical. (The Governor of California is required to publish a list of chemicals known to cause cancer or reproductive toxicity and to update the list periodically.) Enforcement is left primarily to the Attorney General's Office, but a provision in Prop 65 allows any interested citizen to sue to enforce the Act if the state authorities do not do so after being notified of an alleged violation. Citizens who bring suits are entitled to 25 percent of the assessed penalties.

In April 1988, the California list of chemicals was revised to include "environmental tobacco smoke" and smokeless tobacco products as carcinogens, and "tobacco smoke" as a reproductive toxicant. Effective April 1, 1989, all businesses with 10 or more employees where tobacco smoke or products are present will be required to post signs that read: "Warning: This area contains a chemical known to the state to cause cancer or reproductive toxicity." Following legal action by state authorities in September 1988, cigar and pipe tobacco companies agreed to place Prop 65 warning labels on their products.

Since 1987, legislation modeled after Proposition 65 has been proposed in eight states; Hawaii, Illinois, Louisiana, Massachusetts, Michigan, Missouri, New York, and Tennessee. In 1988, a Proposition 65-type initiative petition was readied for ballot in Colorado, but was later withdrawn. To date, none of these measures have been adopted.

SUMMARY ARGUMENTS

1. **Proposition 65 Warnings Are Misleading And Alarm The Public About Products That Are Safe.** This type of legislation applies to thousands of everyday products that are lawfully marketed, and has created a massive burden for companies doing business in the state. The law exposes businesses to the risk of protracted costly litigation, merely to establish that lawfully marketed products are safe and do not pose a health problem.

2. **Products Containing Significant Amounts Of Harmful Chemicals Are Already Regulated Under Most State Laws Or By Federal Government Agencies Including The FDA, The USDA, And The EPA.** These laws have a long history of supervision by the responsible agencies.

2022711461

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

3. **This Type Of Legislation Will Result In Regulating Minute Amounts Of Chemicals At Enormous Cost, With Little Or No Benefit To The Public Health.** It constitutes poor public policy because it misleads the public, imposes burdensome and costly labeling requirements on industry, and drives up consumer prices without any corresponding social benefit.

4. **There Is An Inadequacy Of Scientific Evidence To Support A Listing Of Environmental Tobacco Smoke Either As A Carcinogen Or As A Reproductive Toxicant.** All of the studies implicating ETS and alleged health risks have been epidemiological studies. The International Agency for Research on Cancer stated, "The observations on nonsmokers that have been made so far are compatible with an increased risk from passive smoking or an absence of risk." In other words, no conclusion can be made.

5. **Companies Seeking To Market A Product On A Nationwide Basis Will Face Inconsistent And Conflicting Regulations From State To State.** Such regulations seriously disrupt interstate commerce and serve no useful public purpose.

6. **Proposition 65 Is Based On False Assumptions Concerning Risks.** Proposition 65 is based on the belief that most carcinogens are manmade, thus it is possible to eliminate or limit personal exposures to these substances. However, natural carcinogens are present in foods such as peanut butter, beer, mushrooms, and many vegetables. According to Dr. Bruce Ames, member of the Science Advisory Panel for Proposition 65, the number of carcinogens produced by cooking is several hundred times greater than the amount of carcinogens inhaled by breathing severely polluted air.

2022711462

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

SMOKING CITED AS A "CAUSE" ON DEATH CERTIFICATES (4/89)

SUMMARY

An administrative act, passed by the Oregon Department of Human Resources in 1987, requires that a box be placed on the state death certificates to indicate whether or not smoking contributed to the death. On December 6, 1988, the American Medical Association held a conference and issued a public statement urging other states to adopt similar provisions.

In December 1988, Illinois Representative Matijevich prefiled HR 5, which would require the state to place on death certificates a box asking "Did tobacco use contribute to the death?" Proponents of the bill believe that this would allow Illinois to directly account for the deaths caused by smoking. On April 1, 1989, Nebraska adopted an administrative act requiring that death certificates indicate whether or not smoking contributed to the death. Similar legislation is pending in Massachusetts, Minnesota, Nebraska, New York, New Jersey, and Illinois.

SUMMARY ARGUMENTS

1. **Smoking Is Not A Disease.**
   Causes of death listed on a death certificate are classified and grouped according to the International Classification of Disease (ICD). The underlying cause is defined as "a disease or injury which initiated the train of morbid events leading directly to death." The term is specifically required to reflect the diagnostic term, or cause of death. Smoking is not listed as a classification.

2. **Smoking Is Neither A Sufficient Or Necessary Cause Of Disease.**
   Many factors are associated with the development of disease, and smoking has never been demonstrated to be a causal agent of disease. Multifactoriality complicates the attribution of risk to a particular factor. Even if smoking were a contributory factor to illness and premature death, it would be inaccurate to place the entire blame on smoking. The Surgeon General's 1964 report summarized this by stating, "Statistical methods cannot establish proof of a causal relationship in an association."[1]

---

[1] "Surgeon General's Report on Smoking and Health," 1964.

2022711463

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

3. **Mortality Data Often Contain Errors And Inaccuracies.**
Persistent errors in the diagnosis of cancer as recorded on death certificates continue to cast doubt on the validity of claimed mortality patterns and trends related to smoking. Death certificates are often materially inaccurate and research based on them may not be factual. In a recent study, medical researchers reviewed autopsy reports and medical records for 272 patients. They determined the underlying cause of death was inaccurately stated on the death certificate in 29% of the cases, and is an additional 26% of the cases the death certificate and the autopsy report attributed death to a different specific disease. Therefore, if smoking is listed as a cause for death, the information used in mortality studies will become more distorted.[2]

4. **Smoking Would Become A Scapegoat.**
Even though smoking is not a disease, its presence on the death certificate would allow doctors to use it as a scapegoat for cases where uncertainty exists. They may be moved by emotion rather than scientific information or professional judgment in determining whether tobacco contributed to death.

5. **Death Certificates Are Legal, Not Scientific, Documents.**
Dr. Sheldon Sommers, noted pathologist, regards death certificates as legal, not scientific documents. "Without an autopsy, the information should not be regarded as a scientific conclusion. And, by adding more propoganda to it (the death certificate), it will no longer have a medical function."[3]

6. **Death Certificates Are Being "Politicized."**
Dr. Zako, Professor at the University of Michigan School of Public Health, states "individual rights might be damaged if in the future special interest groups wanted to change death certificates to contain information about whether such things as homosexual activity contributed to the cause of death of an AIDS victim." Soon, there will be other demands for detailed questions about "diet," which the Surgeon General has identified as a contributing factor[4] in the deaths of nearly 1.4 million Americans each year.

---

[2] Kircher, Robert, "The Autopsy as a Measure of Accuracy of the Death Certificate," New England Journal of Medicine, 1985

[3] Council For Tobacco Research

[4] American Medical Association Newsletter, December 1988.

2022711464

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

7. **No Single Factor Is Solely Responsible For A Disease.**
Modern medicine recognizes that the development of disease is the result of many factors. These factors include genetic makeup, diet, occupation, life-style, physical activity, as well as personality. Based on this view, singling out smoking as the only contributing factor is inaccurate and misleading. Using this logic, beef should be listed as a contributing factor in a death of a heart disease patient because of its high cholesterol content; suntan because of the correlation between sunlight exposure and cancer; salt and its relationship to high blood pressure, etc.

8. **Detection Bias Contributes To The Confusion Between The Actual Frequency Of A Disease And The Inaccurate Labeling Of Contributing Agents.**
The "apparent increase" of a disease attributed to an agent can be explained by the increased medical attention and the number of diagnostic tests conducted as a result of hospitalization. The increase actually reported is a result of detecting "silent" diseases, which are underreported in the general, unhospitalized population. The net effect is an increase in the frequency of a disease associated with a suspected agent. "Investigators get data about the occurrence of diagnoses not the occurrence of diseases, and the rates of diagnoses may be affected by the bias in the way the doctors order and deploy the available diagnostic technology."[5] To illustrate by analogy: are higher crime rates happening because crime is really increasing, or are people just reporting it more? Are there more homeless people or are they just more visible?

9. **Listing Tobacco On Death Certificates Could Have Disastrous Consequences For The Family Of The Deceased.**
Misattribution of the death can deprive survivors of benefits to which they are entitled. For those persons who are insured on the basis of representation that they suffer from no alcohol, drug, or AIDS-related conditions, a death certificate statement that one of these conditions contributed to death could result in denial of benefits. Costly and protracted litigation could be required to settle the dispute.

10. **By Complicating The Classification Process On Death Certificates With "Judgment Calls," Doctors Will Be Held Legally Accountable To Families And Insurance Companies To Prove The Exact Cause Of Death Was Accurate.**
Not only will this be impossible, it will substantially increase the number of malpractice suits.

2022711465

---

[5] Researchers Feinstein and Wells, 1974

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

11. **Methods Of Researching Causation Need To Be Substantially Improved To Produce Trustworthy Scientific Evidence.** Since the methods of collecting medical data for death certificates are not universally accepted, forcing a physician to make a judgment can only exacerbate the current problem of inconsistent information. An official at the National Center For Health Statistics stated, "This might scramble the national data more than clarify it and a little more discussion might have been useful."[6]

---

[6] "Death Forms in 2 States Ask About Tobacco Use," The New York Times, January 27, 1989.

2022711466

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

SCIENCE FRAUD (4/89)

STATUS

"Publish or perish." In the pressure-cooker world of scientific research infiltrated by zealots and public relations firms, research fraud and plagiarism are a big problem--and a growing one. In a 1986 survey, June Price of UCLA found that 33% of scientists polled suspected a colleague of tinkering with or faking data. Moreover, more than half of those surveyed said they believe a case of fraud would be covered up by university officials.

The science fraud problem has been so pervasive that within the past year several steps have been taken to control it:

1. In December 1988, the American Medical Association Council requested that guidelines be established to prevent scientific misconduct. The Council also called for the promotion of structured discussions of ethics, the peer review process, and the role of the physician investigator. (Food Chemical News, January 16, 1989)

2. In January 1989, the Association of American Universities issued new guidelines to "distinguish fraud from the honest error and the ambiguities of interpretation that are inherent in the scientific process." The members of the Association consist of the recipients of more than 60% of all National Institutes of Health grants. (Nature, January 1989)

3. On February 13, 1989, a committee of the National Institute of Medicine released a report stating, "There is an exclusively permissive attitude by institutions to allow careless and even fraudulent medical research. Institutions fail to detect and correct early deviant behavior primarily because of an exclusively permissive research environment that tolerates careless practices." The committee made sixteen recommendations to correct the problem. (The New York Times, February 14, 1989)

4. Congressional forces, uncomfortable with the recent fraud investigation by the National Institutes of Health (NIH) of Nobel Prize Winner David Baltimore, MIT, are planning to introduce legislation that would strip the watchdog role from the NIH and place responsibility under a new office, Scientific Integrity and Review. According to a Congressional aide, "the system clearly exhibits the appearance of the proverbial 'fox guarding the chickens,'" referring to the present dual role of the NIH as both funding source and watchdog.

2022711467

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

SUMMARY ARGUMENTS

1. **The Problem Is Endemic.**
   It is not a case of a few bad apples, but one of a system gone wrong. As Dr. Robert G. Petersdorf, Dean of the School of Medicine and Vice Chancellor for Health Sciences at the University of California at San Diego, said, "Science in 1989 is too competitive, too big, too entrepreneurial, and bent too much on winning." Princeton University's Patricia Woolf added that fraud is found at the best universities. "Where research excellence is emphasized and where professors publish considerably more papers than is the norm ...[many of those caught cheating were publishing] at a pathological rate."

2. **Public Funds Are At Stake.**
   Dr. William F. Raub of the National Institutes of Health, which finances most of the nation's biomedical research, said that his federal office gets about two complaints a month. Raub noted that "each one of these is threatening to the integrity of science."

3. **Fraud Refocuses Society's Attention On The Negative Side of Science.**
   Fraud in science not only leads to wasted time and money, but also to diminished respect for the quality of research in general. Fraud can cause harm to patients whose treatments are based on faulty information. "In an era when America appears to be losing its competitive edge in science and, indeed, is falling behind, the prestige of science as a profession is at an all-time low." (Chicago Tribune, November 15, 1988)

IMPACT

Although the extent of scientific dogma that is based on fraudulent or lax standards is unknown, the fact that the integrity of science is being questioned by Congress, by university associations, as well as scientists themselves is a cause for concern. Some recent publications about the alleged health effects of ETS on nonsmokers are, at the very least, candidates for a debate on lax scientific standards. Since some scientific results are questionable, it should be necessary to verify the validity of these studies before initiation of a legislative solution.

John C. Bailer, former editor of The Journal of the National Cancer Institute, said many scientists distort data that contradict their theories or use improper statistical methods that will give them the most favorable result. Bailer reported that some researchers do repeated experiments until they finally get their desired result, possibly by chance. Then, Bailer said, they report only that result.

2022711468

https://www.industrydocuments.ucsf.edu/docs/xlvf0000

SOCIAL ISSUES

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

PURPORTED SOCIAL/HEALTH-CARE COSTS ATTRIBUTABLE TO SMOKING (4/89)

"Nonsmokers Do Not Pay An Economic Price For Smoking."
The New York Times
(editorial, 3/13/89)

STATUS

Anti-smokers define "social cost" as the cost of an activity to the consumer, plus the sum of the value of the consequences of an activity in excess of those costs borne by the consumer which accrue to everyone else. One of their prominent accusations is that smoking "costs society billions of dollars each year." This charge is hurled about wildly with figures ranging from $49 billion to $100 billion. All the social cost figures associated with smoking appear to originate in a 1978 article by Bryan Luce and Stuart Schweitzer (two health-care economists), "The Economic Cost of Smoking Induced Illness," published by the U.S. National Institute on Drug Abuse.

To calculate the health-care costs, Luce/Schweitzer took a 1976 study by Cooper and Rice which estimated the direct (medical care) and indirect (productivity loss due to death or incapacitation) costs in 1972 of 16 major diagnostic categories without regard to cause. Luce/Schweitzer took a second 1976 study by Boden that estimated "the percentage of major disease categories due to environmental problems, including smoking." They multiplied the Cooper/Rice figures by the Boden percentages for smoking and then adjusted the dollar figures by the change in the Consumer Price Index (CPI) since 1972. In addition, Luce/Schweitzer added the retail dollars spent on tobacco products ($15.7 billion in 1975) to produce a grand total cost of smoking of $41.5 billion.

Every "new" social cost estimate has been derived by multiplying the Luce/Schweitzer figures by the rate of inflation. Since the CPI had almost doubled between 1978 and 1985, so, too, have the cost estimates for smoking. In 1985, the Office of Technology Assessment did a paper titled "Smoking-Related Deaths and Financial Costs," which incorporated various studies and produced a "new" estimate of $65 billion.

Year	Source of "New" Estimate	Costs in Billions
1978	Luce/Schweitzer	$25.9
1983	Warner	$49
1985	Office of Technology Assessment	$39-95

Seeing how the social cost issue developed, it's also easy to see how it has spread: federal, state, and local cigarette excise tax bills are proposed and passed with the ostensible goal of making smokers shoulder more of the burden of the alleged social cost of smoking. Businesses, believing they will increase productivity and limit insurance and health care costs, are prohibiting and even banning smoking at an accelerating rate.

2022211470

Source: https://www.industrydocuments.ucsf.edu/docs/[illegible]

SUMMARY ARGUMENT

1. **Taken To Its Logical Conclusion, The Social Cost Theory Can Be Used to Justify All Manner of Government Intervention In Private Business And Individual Behavior.** The most germane example is illustrated by current medical care and national health insurance systems which do not require users to pay according to the amount of health care received. Adoption of the social cost approach to healthcare would in contrast demand that people requiring more medical assistance, such as diabetics or those with kidney ailments, be taxed more heavily to pay for their own care. This would justify government getting involved and create a premise for future intervention.

2. **There Is No Legal Basis For Legislating (in either public or private policy) On Social Cost Grounds.** No court has upheld the social cost argument as a viable legal theory. In fact, in June, the Commissioner of the Minnesota Department of Human Rights found that DCA Inc.'s policy of hiring only nonsmokers, on the basis that smokers are more likely to become disabled or ill, was in violation of the state's Human Rights Act.

3. **Medical Risks Are Associated With All Sorts Of Personal Behavior.** Should those who don't exercise pay more taxes? A recent government study estimates that obesity costs society approximately $27 billion a year. Should those who take a vacation by car pay more taxes? The government estimates these vacations cost society $114 billion a year, not including road repairs. What about those who pay for medical services but don't use them? Should they receive tax rebates? It is a fact that lower income groups impose a relatively heavier burden on the health insurance system than higher income groups because of greater reliance on the public healthcare system. Should the government then increase taxes on the poor?

4. **Inappropriate Causal Attributions Of Diseases To Smoking.** Many factors are associated with the development of disease, and smoking has never been demonstrated to be a causal agent of disease. Multifactoriality complicates the attribution of risk to a particular factor. Even if smoking were a contributory factor to illness and premature death, it would be quite inaccurate to attribute to smoking the whole of the associated costs.

2022711471

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

5. **There Is False Counting.** A study by Dr. Robert Kircher, published in the New England Journal of Medicine, analyzed the methodology for calculating mortality figures and concluded that "the underlying cause of death was inaccurately stated on the death certificate in 29% of the cases."[1]

6. **The Largest Component Of Social Cost Estimates Comes From The Indirect Costs Associated With Smoking.** These costs are virtually always derived from lost productivity estimates. No solid data exist linking smoking to decreased productivity. Indeed, one study found that "people who smoke tend to be more productive than those who do not." A Swiss study found that reported differences in absence from work between smokers and nonsmokers disappeared when social class was considered.

   Moreover, a recent survey by the Bureau of National Affairs showed that 3% of those companies that banned smoking reported a decrease in productivity after implementing a no-smoking policy, and the vast majority, 89%, reported no effect on productivity.[2]

7. **These Alleged Social Costs Would Be Borne By Smokers Themselves.** The New York Times, March 13, 1989, reported, "Nonsmokers do not pay an economic price for smoking." And even if one insists on believing in a relationship between smoking and decreased productivity, lost production is a private, not a social cost. To count this cost also as a social cost would be to count the same amount twice, thus grossly inflating the "social cost" estimates.[3] Robert Tollison, Director of the Center for Study of Public Choice at George Mason University, states, "When any worker, for whatever reason, is less productive than another, that worker is going to earn less and not be promoted. Society doesn't pay the cost of that worker's low productivity, the worker does, by earning less money."[4]

---

[1] Kircher, Robert, "The Autopsy as a Measure of Accuracy of the Death Certificate," New England Journal of Medicine, 1985.

[2] Where There's Smoke: Problems and Policies Concerning Smoking in the Workplace," Bureau of National Affairs, 1987.

[3] "Safer Cigarettes", The New York Times, March 13, 1989.

[4] Tollison, Robert, ed., Smoking and Society, Toward A More Balanced Assessment, D.C. Heath and Company, Lexington, Massachusetts, 1986.

2022711472

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

8. **On March 17, 1989, The New York Times reported the findings of a Journal of American Medical Association (JAMA) study stating, "Taxes on cigarettes cover the costs imposed on society by smoking."**[5]

9. **Most Current Social Economic Analyses Serve Political Rather Than Economic Ends.** A 1985 study by the Office of Technology Assessment (OTA) is frequently cited by anti-smokers to justify increased legislation. Independent researchers dispute their conclusions, noting that the basis of the report is inconclusive, contains inaccuracies, and relies on incorrect assumptions. For example, some noted that the OTA confused "private costs" with "social costs," and ignored other considerations, such as demographics.[6]

10. **No Attempt Made To Offset Alleged Costs By The Economic Benefits Generated By The Tobacco Industry.** Over 2.3 million jobs are generated by the industry and by expenditures on tobacco products. The industry contributes over $82 billion per year to the U.S. GNP, and generates $45 billion in wages. Federal, state, and local governments collect over $10 billion per year in cigarette taxes, and an additional $20 billion in other tax revenues related to the tobacco industry.[7,8]

---

5 "Taxes Fail to Cover Drinking's Costs, Study Finds," The New York Times, March 17, 1989.

6 "Smoking Related Deaths and Financial Costs," Office of Technology Assessment, 1985.

7 The Tax Burden on Tobacco, Tobacco Institute, 1989

8 "The Economic Impact of the Tobacco Industry on the United States," Chase Econometrics

2022211473

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

SOCIAL ACCEPTABILITY (4/89)

STATUS

When science reports, and the mass media publicize, arcane and remote risks, the public comes to focus on each. The government then responds with legislation, regulation, and research funds, which reinforce the public perception of the risk's significance. The inability to disaggregate and weigh risk factors precisely, contributes to the pervasive sense of being at risk. Whole groups of people whose practices arouse risk fears are ostracized. Some members of the public label boundaries ("don't pollute my airspace"), they demand segregation based on their risk perceptions ("no smoking section, please"), and they torment those who don't share their risk perceptions ("you'll die if you don't stop smoking, start exercising, stop eating red meat...").

This growth in risk consciousness is largely a product of modern society's success in reducing serious risk. The very risks upon which so much attention is focused are those which, even if eliminated, would not significantly improve life expectancy. "The airwaves, the printed page and public lectures bombard us constantly with apprehensions and fears about our well-being. Almost everywhere you turn you find the once-conservative medical profession creating demands and huckstering claims, that were, only so recently, not only unethical but unthinkable." (Washington Post, 4/17/88)

The Wall Street Journal (3/17/89) concludes:

> "The witchcraft tales have been drummed into the American psyche these past twenty years principally by environmental groups flogging issue after issue as threatening America with an Apocalypse of cancer and disease."

The Economist (6/18/88) sums up the issue:

> "A remote beach on the Bahamas is probably a better bet than Wall Street if you want to avoid a way of life that is likely to fell you with a heart attack. On the other hand, if you do succumb on a Bahamian beach, you are less likely to be resuscitated promptly than if you had keeled over in Manhattan."

Maybe public policy would be better served if the public were given a chance to think rather than reasons to panic.

SUMMARY ARGUMENTS

1. In lawmaking bodies, the opportunity for media attention offered by the smoking issue is difficult for some legislators to resist:

2022711424

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

State and Local Smoking-Restriction Bills

	1980	1981	1982	1983	1984	1985	1986	1987	1988
Debated	149	165	165	206	289	374	395	492	411
Enacted	33	45	46	67	69	140	156	197	130

Source: The Tobacco Institute

Smoking is perceived as a health risk to nonsmokers. Therefore, the modern anti-smoking crusaders are satisfied only by driving smokers from society. For all their moralizing they care little about the smoker, but much about themselves. Thus, the anti-smoking movement is fundamentally immoral and elitist.

2. Environmental advocates and consumer movements have encouraged Americans to search for the impossible: a risk-free society. Without risks, life would not be worth living. Aaron Wildauski, a professor of political science at the University of California at Berkeley, and the author of "Searching For Safety," contended that since all innovation requires risk, a search for absolute safety would inevitably impede both economic and scientific progress.

3. Businesses tend to accommodate "life-style" wishes of vocal employees if for no other reason than to avoid lawsuits. Indeed, the litigious character of post-1970 American society has contributed to the declining social acceptability of smoking. Legal actions create an economic incentive for business to proscribe personal activities that are perceived to be harmful to health and potential grounds for lawsuits or disability claims.

4. Most risk assessments are judged as political questions, not abstract theoretical matters, in which power and economic interests can matter as much as science and calculations.

5. As social acceptability is redefined according to risk perception, and virtually everything contains some level of risk, more and more activities become socially suspect. For example, experts claim natural is better, yet natural foods contain toxins, mutagens, and carcinogens. If no level of risk can be tolerated, then the serious risks and the real problems become obscured: the ozone, water/air pollution, solid waste, hazardous waste, the "greenhouse effect," etc. In cases of minute danger, it is time to reevaluate the saying, "Better to be safe than sorry."

2022711475

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

BIBLIOGRAPHY OF BALANCED SOCIAL COSTS ARTICLES

Lee, Dr. Dwight R., "Statement of Dr. Dwight R. Lee, Ramsay Professor of Private Institutions, University of Georgia," January 14, 1986.
-- Rebuttal to smoking restriction proposal in Indiana.

Niehaus, Greg and Tollison, Robert D.; Economic Impact of Instituting Smoking Prohibitions in Michigan Michigan Tobacco and Candy Distributors and Vendors Association.
-- Assessment of the economic impact of imposing smoking restrictions in a variety of public and private locations in Michigan.

Passell, Peter, "Who Should Pay Smoking's Cost?" The New York Times, June 22, 1988.
-- The argument that smokers should pay higher excise taxes to offset health care bills and lost productivity does not stand close analysis.

Pike, Douglas, "Society Actually Saves from Smokers," The Philadelphia Inquirer, June 17, 1988.
-- The actual cost of a smoker must be broken down cost by cost.

Shoven, John B.; Sundberg, Jeffrey O.; Bunker, John P., "The Social Security Cost of Smoking," Working Paper Series #2234, National Bureau of Economic Research, Inc., May 1987.
-- The decline of smoking as a negative cost effect on the social security system.

Shughart, William F.II and Tollison, Robert D., "Smokers Versus Nonsmokers," Smoking and Society, Toward a More Balanced Assessment, Robert Tollison, ed., D.C. Heath and Company, Lexington, Massachusetts, 1986.
-- Smoking as an economic factor in employment; wealth transfers from smokers and from owners of firms in the economy.

Stoddart, Greg L.; Labelle, Roberta J., "Tobacco Taxes and Health Care Costs," Journal of Health Economics, 5 (1986) 63-80, North Holland, 1986.
-- Health care costs for smoking-related diseases do not exceed tobacco tax revenue.

Ture, Norman B., "Social Policy and Excise Taxes," July 8, 1988.
-- The consequences of higher taxes are great threats to personal freedom of choice.

Warner, Kenneth E., "Health and Economic Implications of a Tobacco-Free Society," Journal of the American Medical Association, Vol. 258, No. 15, Oct. 16, 1987.
-- Pros and Cons of health and economic factors produced from a tobacco-free society.

Wright, Virginia Baxter, "Will Quitting Smoking Help Medicare Solve Its Financial Problems?" Inquiry 23:76-82 (Spring 1986), Blue Cross and Blue Shield Association.
-- "a successful policy of disease prevention has a recessive economic potential, as more people reach and live well beyond retirement age."

2022711476

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

LIABILITY

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

FIRE-SAFE CIGARETTE LEGISLATION (4/89)

"Fire-safe" describes a hypothetical cigarette that will go out if not smoked in a certain period of time, or a cigarette designed so that it is less likely to start a fire in materials such as upholstery or clothing.

LEGISLATIVE HISTORY

Since 1980, legislation to require cigarettes to be made "fire-safe" has been considered by 17 states in the form of 60 bills, as well as by the federal government.

State Fire-Safe Bills	1980	1981	1982	1983	1984	1985	1986	1987	1988
Debated	1	5	8	17	8	3	5	10	5
Enacted	0	0	0	0	0	0	0	0	0

Source: The Tobacco Institute

The majority of the state bills introduced would require agencies within the state to set fire-safe standards, specifically the amount of time allowed for the cigarette to extinguish, the amount of time for development from passage of the bill, and the amount of time for meeting the standards. The others were resolutions urging Congress to pass self-extinguishing legislation. State activity on this issue peaked in 1983, when 10 states considered 17 bills.

So far this year, two states have introduced fire-safe legislation: Massachusetts and Minnesota.

On the federal level, the Cigarette Safety Act of 1984 created the Technical Study Group on Cigarette and Little Cigar Fire Safety (TSG), to investigate technical and commercial feasibility, economic impact and other consequences of developing cigarettes and little cigars, with a minimum propensity to ignite upholstered furniture or mattresses. The Interagency Committee, comprised of the heads of three federal agencies (Consumer Products Safety Commission, Department of Health and Human Services, U.S. Firefighters Association), was given responsibility for supervising the research effort of the Technical Study Group. Cigarette company scientists participated in the 15-member Technical Study Group.

2022711478

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

On October 6, 1987, the TSG released its final report following three years of study of the fire-safe cigarette matter.[1] The group concluded, in brief, that while it may be possible to design a cigarette having a reduced ignition propensity, a substantial amount of further work would be needed to assess the technical and commercial feasibility and other consequences of such a product. The TSG, and subsequently the Interagency Committee, therefore recommended that additional study be carried out in the following areas:

- -Design of a standard test method to measure ignition propensity;
- -Development of performance data for current market cigarettes, to serve as a baseline for any new cigarettes that might be developed;
- -Characteristics of cigarettes, products ignited, and smokers involved in fires;
- -Changes in the toxicity of smoke and resultant health effects from the modified cigarettes, and societal costs of injuries from cigarette-initiated fires;
- -Acceptability to the smoking public of modified cigarettes.

The TSG and the Interagency Committee also recognized that, depending upon the precise modifications that might be suggested for cigarettes, additional work concerning the economic consequences of the modifications would be required.

ARGUMENTS

1. **Attempts To Change Cigarettes Will Not Solve The Problem.** It is also important to note that a narrow focus on fire-safe cigarettes obscures the broader accidental fire safety problem. A report released by the Consumer Products Safety Commission on national fire loss claims that in 1986 29% of fire deaths were related to cigarettes. This 14% decrease from 1985 (33%) is significant since all of the other categories, with the exception of match-related fire deaths, showed an increase.[2]

2. **Advances In Technology Cannot Be Created Through Legislation.** The report by the Technical Study Group on Cigarette and Little Cigar Fire Safety concluded that the manufacturing of less fire-prone cigarettes may require some advances in cigarette design and manufacturing technology. Despite attempts by the federal government, the tobacco industry, and by several

---

[1] "Improving the Fire Safety of Cigarettes - An Economic Impact Analysis, National Bureau of Statistics, 1987.

[2] "National Fire Loss," Consumer Product Safety Commission, 1987.

2022711479

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

independent scientists, a commercially acceptable fire-safe cigarette has not yet been developed. The report by the TSG concluded that positive health impacts and fire-loss savings have been overestimated because of the false assumption that the necessary industrial capacity exists.

3. **Legislation Jumps The Gun - Validated Measurement Method Does Not Exist.**
The Technical Study Group determined that a validated measurement method is needed to determine if a cigarette is less ignition-prone. State passage of unmeetable standards, such as those being proposed in legislation, would mean a virtual prohibition on cigarette sales in that state. It would, therefore, not result in the anti-smokers' desired end to smoking, but would cause widespread bootlegging and "black market" sales.

4. **Study Doesn't Address Feasibility And Acceptance Issues.**
The Technical Study Group did not address the question of whether the fire-safe cigarette would be commercially feasible, and it assumed that consumers would readily accept the new product. Also, consumer impacts, cigarette industry impacts, tobacco farming impacts, and tax and employment impacts are all estimated **only for the first year** following modification. No calculations have been made to consider the long-term effect on some of these factors (p. 3). Thus, changes in second-order impacts are underestimated (i.e., change in output foregone, changes in quality of life).

5. **Possible Adverse Employment And Income Effects.**
The Technical Study Group did not rule out the possible increase in the price of cigarettes, or a decline in employment related to the industry, or increased health care costs, or changes in the financial status of the affected industries and professions.

6. **The Cigarette And Tobacco Industry Are Not The Only Opponents Of The Bills To Make A Fire-Safe Cigarette**
Many members of the firefighting and fire prevention community also fear that development of a fire-safe cigarette will interfere with the consideration of more comprehensive answers to the accidental fire problem. Many countries such as Canada, Asia, and Western Europe have achieved significantly lower rates of cigarette-related fires, primarily through improved safety and public education programs, rather than by attempts to change consumer products.

7. **Fire Safety Is Clearly A National Concern.**
Enacting fifty individual and separate laws concerning "fire-safe" cigarettes will cause chaos and confusion. The federal government has already invested several million dollars in the effort to develop a reduced-ignition-propensity cigarette, an investment that supplements the standing efforts of the individual tobacco companies. The tobacco industry, along with most major fire service organizations, supports

2022711480

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

federal legislation that would implement the recommendations of the TSG and has announced opposition to other bills that would ignore the TSG recommendations and move directly to create standards.

8. **Improved Public Education Is The Real Answer.**
Imagine telling a cutlery maker to manufacture a knife that can cut meat but not your finger. Imagine telling a television manufacturer to produce a TV that will unplug itself during a thunderstorm. That would be ridiculous. No responsible person would oppose a reasonable program to promote fire safety. But a law to require fire-safe cigarettes isn't reasonable. It doesn't address the overall fire safety problem and it sets an ominous precedent: government dictating to consumers what products they can and cannot buy. The real answer to fire safety is improved public education, furniture with fire-resistant fabric, safer heating units, and smoke detectors.

9. **Technological Advances Cannot Be Legislated.**
Some cost data presented in this report assume that immediate implementation is technically feasible. This is incorrect. In the case of modifications that call for "expanded" tobacco and increased paper weight, a lack of necessary industrial capacity exists. In both cases, positive health impacts and fire-loss savings have been overestimated as a result of this false assumption.

10. **The Technical Study Group Report Fails To Consider That Behavioral Changes Might Result From Product Modifications.**
For instance, making cigarettes less likely to ignite could cause increased carelessness, perhaps increasing the number of deaths and injuries and the amount of property damage.

11. **The Technical Study Group Report Itself Concludes:**

a. <u>The savings potential from fire-safe cigarettes is estimated to decline gradually over time</u>. A projected downward trend in consumption, an increase in the prevalence of fire-resistant bedding and upholstery, and improvements in fire mitigation technologies are estimated to diminish deaths and injuries from cigarette fires by 20 to 25 percent, and property losses by about 10 percent, by the mid-1990's (p. vii).

b. <u>Almost 6,000 jobs will be lost if cigarette circumference is reduced</u>. Reduced circumference lessens the tobacco content, reducing the demand for domestic tobacco by 30%, lessening the price by an estimated $0.08 per pound of leaf, and lessening the annual tobacco revenue by $300 million, or 15%. Also, 5,000 full-time tobacco farming jobs will be lost (14%), and over 900 manufacturing jobs will go, while fewer than 200 jobs will be created in other tobacco industry sectors. Note: The report shows that under this modification, health effects could be undesirable (p.33-38).

2022711481

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

c. 1,700 farming jobs will be lost if cigarette density is reduced. Reduced density lessens tobacco content, reducing the demand for domestic tobacco by 12.7%, lessening the price by an estimated $0.04 per pound of leaf, lessening the annual tobacco revenue by $130 million or 6%. At least 1,700 full-time tobacco farming jobs will be lost, while fewer than 600 jobs will be created in other cigarette manufacturing sectors. Note: The report shows that under this modification, health effects could be undesirable (p.36-39).

d. Long-term effects are unknown. Consumer impacts, cigarette industry impact, tobacco farming impacts, and tax and employment impact are all estimated **only for the first year** following modification. No calculations have been made to consider the long-term effect of some of these factors (p. 3). Thus, changes in second-order impacts are underestimated (i.e., change in output foregone, change in quality of life).

e. More government regulation may result. To offset some of the second-order impacts resulting from some of the modifications, the report seems to recommend additional government regulation of agriculture. Government quotas are specifically pointed as a way to resolve demand and price declines imposed on farmers (p. 10).

2022711482

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

CIGARETTE TESTING AND LIABILITY (4/89)

STATUS

Section 5 of HR4543, introduced by Representative Thomas Luken in 1988, the preemption and liability clause, would have effectively repealed the national standard for health warnings on cigarette packages and advertisements. It was an attempt to amend the decision made by Congress in 1965 that created a national standard for these warnings and preempted state legislation. The bill would have permitted individual states to determine their own standards for cigarette health warnings.

Luken reintroduced this language in the 101st Congress as a provision of HR1250, the "Protect Our Children From Cigarette Advertising Act 1989."

SUMMARY ARGUMENTS

1. **Preemption Was Clearly The Intent Of Congress When It Passed The Cigarette Labeling And Advertising Act In 1965.**
Congress preempted certain state tort actions in order to ensure that the federally mandated warning notice be the only statement relating to smoking and health required on cigarette packages. The rulings of four United States Courts of Appeal (1st, 3rd, 6th and 11th circuits) and various other federal and state courts have upheld Congress's decision to preempt state damage actions relating to smoking and health that challenge either the adequacy of the warning on cigarette packages or the propriety of a party's actions with respect to the advertising and promotion of cigarettes. The true purpose of this type of legislation is to reverse the rulings of these court decisions and the original intentions of Congress.

2. **Preemption Does Not Deny Potential Plaintiffs The Ability To Seek Action Against Tobacco Companies.**
Although some critics of preemption have asserted that these rulings provide a cloak of immunity that the tobacco companies are hiding behind, tobacco companies have not been immunized from product liability suits. Plaintiffs have consistently failed to prevail in over 300 product liability suits against the industry. This consistency results not because of technicalities in tort law, but because courts and juries have recognized the notion that personal responsibility is a necessary corollary of personal freedom.

3. **A National Standard For Commercial Activity Is In The Public's Best Interest.**
New health warnings set forth by the states would undermine the uniform warnings prescribed by Congress. To facilitate commercial activity, the Constitution delegated to Congress the duty of overseeing national commerce. As the Founding Fathers recognized, giving Congress the authority to

2022711483

Source: https://www.industrydocuments.ucsf.edu/docs/xlvh0000

regulate national commercial activity is an intelligent decision, for it eliminates the havoc that would result from fifty different jurisdictions regulating the activity. By determining one common law rather than fifty different ones, a clear and concise standard is set for all to abide by. Changing the present law would create confusion and disrupt national commercial activities.

4. **The True Purpose Of Cigarette Testing And Liability Legislation Is To Allow Plaintiffs To Start Winning Tobacco Product Liability Suits.**
Many advocates of a repeal of federal preemption hope that the state courts and legislatures, if only unleashed, will invent new theories of liability under which smokers can start winning cases against tobacco companies. Such legislation is an effort to use the court system to achieve a social result: eliminating or at least substantially reducing cigarette smoking.

5. **Cigarette Testing And Liability Legislation Would Encourage Individual States To Impose Advertising Bans And Restrictions On Lawful Products.**
Not only would this legislation exacerbate the growing tendency toward the proliferation of advertising restrictions, it would effectively encourage states to impose drastic free speech-related burdens or total bans on cigarette advertising. Regulation by one state could prompt other states to impose comparative restrictions, which would set a dangerous precedent.

2022711484

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

CIGARETTE MANUFACTURER LIABILITY (4/89)

SUMMARY OF TORT AND PRODUCT LIABILITY REFORM

Elements of tort and product liability reform have been enacted in more than 30 states, including restrictions on punitive damages, sanctions for frivolous lawsuits, and caps on noneconomic damages. The complexity of reforms has contributed to the increasing problems related to the availability, affordability, and adequacy of liability insurance. The cost of liability insurance is increasing at an alarming rate, while the coverage of such insurance has been narrowed or cancelled altogether. In some instances, juries have given awards upwards of $10 million for claims dating back to years when flaws were totally unforeseen. Most of these substantial sums paid to settle suits would have been considered of "nuisance value" a decade ago.

This situation has impeded the U. S. manufacturing industry's ability to compete in the international marketplace and has jeopardized new product innovation and development. The system has caused the discontinuance of existing products and research on liability-prone product lines, layoff of employees, and loss of market share.

STATUS OF CIGARETTE MANUFACTURER LIABILITY

Over 300 product liability suits have been filed against tobacco companies since the first action was brought in 1954 (Edwin Green v. American Tobacco Company). Prior to the Cipollone trial in 1988, 16 of these cases had gone to trial, and not one resulted in a judgment against a tobacco company.

Pending suits have dwindled to fewer than 100 (December 1988) - a drop of more than 40% from the number of suits pending from the year earlier. Thirty-four involve Philip Morris. Over 70% of the remaining cases are being handled by just 6 plaintiffs' law firms.

LEGISLATIVE SUMMARY

Five states have introduced cigarette manufacturer liability proposals, designed to create a new cause of action against cigarette manufacturers for various diseases purportedly resulting from cigarette smoking.

Illinois (4/85) and Wisconsin (4/88, 9/85) proposals would have permitted family members to sue a cigarette manufacturer for lost financial support due to death, illness, or disability of a relative from "cigarette-induced lung cancer or emphysema." A Louisiana proposal (5/88) would have given the state a cause of action against manufacturers of cigarettes to recover expenses incurred by the state in providing medical treatment for lung cancer for any person that the state can prove contracted the cancer as a result of cigarettes. A Rhode Island bill (3/86) would have established a cause of action for a variety of diseases, including lung cancer, emphysema, and heart disease. Punitive damages would be specifically permitted. A Washington proposal (4/89) would shift the burden to the defendant to prove that cigarette smoking did not cause the plaintiff's injury. All these bills died except for the Washington bill, which is still pending in the Committee on Law and Justice.

2022711485

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

SUMMARY ARGUMENTS

1. **Civil Law Should Prevent, Rather Than Encourage, The Search For A "Deep Pocket".** Our legal system should be altered to compensate people who have been injured and to minimize the threat of lawsuits that are discouraging individuals and companies from introducing innovative products for fear of prohibitive liability awards. The courts should return to the concept of real fault and penalize only those who make unreasonably dangerous products, engage in illegal or deceptive practices, or maliciously harm others. This would prevent our legal system from becoming a playground for hypochondriacs.

2. **Consumers Have Been Aware Of Possible Health Hazards For Several Decades.** The ordinary American smoker has, in fact, been deluged with information about the potential hazards of smoking since the first Surgeon General's Report 25 years ago. Indeed, smoker awareness of possible health hazards was high in the early 1950s, when Reader's Digest -- the most widely read publication in America -- touched off the first health scare. Under the concept of strict liability, a manufacturer may be found liable for damages only if he fails to warn consumers of the "unreasonable dangers" of a product he markets. The four-decades-old controversy over the issue of smoking and health will make it difficult for juries to find that cigarette smokers were not adequately warned of the potential dangers.

3. **Tort Reform Should Put Restrictions On Liability Awards.** The number of lawsuits has exploded in the past 25 years. While million-dollar jury verdicts were awarded only twice in 1963, the count was over 400 for 1987, not including the cases settled out-of-court. The cigarette "accountability acts" that have been introduced would create an administrative nightmare, prompt unnecessary and unwarranted litigation, create uncertainty where none now exists, and create a business out of liability lawsuits.

4. **Tort Reform Must Consider Inappropriate Casual Attributions Of Disease To Smoking.** The presumption of causation is irrational and arbitrary, violating the due process clause of the U.S. Constitution. Scientific research over the past 15 to 20 years has determined that a number of other factors are associated with many of the diseases commonly linked to smoking. Thus, such legislation repudiates the universally recognized and fundamental premise of tort law: A plaintiff must prove causation as a prerequisite for recovery.

5. **The Singling Out Of The Tobacco Industry From Among Numerous Others That Manufacture Lawful Products Alleged To Cause Harm Is Discriminatory And In Violation Of The Constitutional Guarantee Of Equal Protection.**

2022711486

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000

WARNING LABELS (4/89)

STATUS

On October 12, 1985, Congress required four new warning labels on all cigarette products and advertising to be rotated quarterly. This is the second revision in the federal labeling law since 1966. The labels begin with "Surgeon General's Warning" and state:

- "Smoking Causes Lung Cancer, Heart Disease, Emphysema, and May Complicate Pregnancy."
- "Quitting Smoking Now Greatly Reduces Serious Risks To Your Health."
- "Smoking By Pregnant Women May Result in Fetal Injury, Premature Birth, And Low Birth Weight."
- "Cigarette Smoke Contains Carbon Monoxide."

In 1988, Senator Bill Bradley (D-NJ) added an amendment to the Omnibus Drug Bill to require a fifth warning be added to the rotation: "Smoking is Addictive." The provision was omitted from the bill. In the 101st Congress, Representative Jim Slattery (D-KS) introduced the "Federal Cigarette Labeling and Advertising Act, Amendment," which would require cigarette packaging and advertising to bear a permanent label, in addition to the four current labels, stating: "Surgeon General's Warning: Nicotine in Cigarettes is an Addictive Drug." The bill is pending in committee.

SUMMARY ARGUMENTS

The continued emphasis on histrionic labels appears unnecessary in light of virtually universal knowledge (90+%) of the health risk claims regarding smoking.

In hearings before the United States House of Representatives in March 1982, on a proposal for rotational warnings, a letter by Burns W. Roper, Chairman of the Roper Organization, concluded, "The public is highly aware of the reported danger of smoking." In a Report to Congress, the Federal Trade Commission stated: "More than 90% of adults now believe that smoking is hazardous to health."

In an article on causes and prevention of cigarette smoking in children and young adolescents, published in the Journal of Advances in Behavioral Pediatrics (1981), N.T. Blaney states:

> "Perhaps the most consistent finding for both adolescents and adults is that knowing that smoking is harmful does not deter people from smoking nor does increasing a person's awareness of the risks cause smoking habits to change....At present, data do not show that knowledge of health risks either differentiates between smokers and nonsmokers or serves to deter the onset of smoking."

2022711487

Source: https://www.industrydocuments.ucsf.edu/docs/xlvl0000